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ABANDONED MINE RECLAMATION FUND

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON THE

STATUS AND IMPLEMENTATION OF THE
ABANDONED MINE RECLAMATION FUND

FEBRUARY 24, 1983

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ABANDONED MINE RECLAMATION FUND

FRIDAY, FEBRUARY 24, 1983

U.S. SENATE,
SUBCOMMITTEE ON ENERGY AND MINERALS RESOURCES,
COMMITTEE ON ENERGY AND NATURAL RESOURCES
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Office Building, Hon. John W. Warner, presiding.

Present: Senators Warner, Hecht, Ford, and Melcher.

Also present: Roger Sindelar, counsel; and Linda Mason, professional staff member for the minority.

OPENING STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **WARNER**. The hour of 10 o'clock has arrived. We will now open the subcommittee hearing. We are honored to have the distinguished Senator from West Virginia present with us this morning, as well as one of my new colleagues from the State of Virginia, Congressman Boucher, representing the Ninth Congressional District.

It is the Chair's regard to accommodate our senior Senator, and what we will do is I will make a brief opening statement, followed by Mr. Randolph, Mr. Boucher, and then we will proceed with the witnesses, Mr. Harris and Mr. Brown.

In 1977 Congress passed a unique piece of legislation which attempted to balance the production of needed domestic energy resources with the protection of our Nation's fragile environment.

The Surface Mining Control and Reclamation Act of 1977 established a nationwide program to protect society and the environment from the adverse effects of surface coal mining and to assure a coal supply essential to the Nation's energy requirements as well as exports.

Implementation of this necessary legislation has not been without controversy, but it has been instrumental in drawing attention to the environmental effects of mining and the importance of restoring lands now being mined.

I am pleased to announce today that the Interior Department's Office of Surface Mining has notified the State of Virginia that it will receive $2,326,000 in Federal funds to help the State of Virginia administer and regulate the surface effects of coal mining and provide assistance to small operators in putting together their mining permit application. I know this money will be put to good use in Virginia's coal counties in implementing the Surface Mining Act.

Other States, of course, will be receiving their funds in due course, and I am sure Mr. Randolph will soon learn about the allocation going to our neighboring State, West Virginia.

The Surface Mining Act also attempted to address post mining practices by creating the Abandoned Mine Land Reclamation Fund, commonly known as AML. This program was established to reclaim land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas.

The AML program is funded by a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary.

From this fund, States having an approved title IV regulatory program and an approved reclamation program, receive 50 percent of the funds collected in their State. The other 50 percent remains in the Secretary of the Interior's discretionary account. Again, that account is governed, however, by the provisions of the 1977 act.

By the end of fiscal year 1982, approximately $904.4 million was accumulated in the AML fund, and there was an unappropriated balance of about $513.5 million. The unappropriated balance for the State share was about $360 million. In my judgment there have been unfortunate delays in expending moneys under the State's 50 percent portion of the fund. The purpose of this hearing is to try and reconcile the differences that have arisen between State problems and Federal administration of these funds. Nevertheless, these delays have meant that life-threatening and property-threatening projects have not been addressed.

I would like to cite an example that took place in the State of Virginia in the small town of Dante. A life-threatening gob pile suspended over a hollow in which 160 people lived in 40 homes. Everytime it rained there were threats of floods and mudslides to the people living in the community.

The Soil Conservation Service applied for funds on March 30, 1979, under the rural abandoned mine land program. When no funds were forthcoming by November 1981, the State took over the program and applied on December 8, 1981 for a grant under the State 50-percent portion. Perhaps this was because the State would not qualify under title V. Subsequently the State did qualify under title V.

Finally on February 22, 1982—almost 3 years from date of first application—the project was approved and funded.

For 3 years the residents in that little hollow faced a clear life-threatening situation with no corrective action.

Now, the purpose here today is to try to get to the bottom of problems such as this. It is estimated $360 million which is the present unappropriated balance in the State's fund account could employ anywhere from 7,000 to 15,000 persons. In all probability, some of those individuals would be unemployed miners.

Because of the deep concern that I and others have about these types of delays, I joined with my colleague, Senator Ford, who is a member of this committee, in cosponsoring an amendment in December 1982 to the continuing resolution which requires the Office of Surface Mining to release money for grants within 60 days of receipt from the State of the completed abandoned mine reclamation fund grant application from any eligible State.

I understand that the Office of Surface Mining has already been working toward this goal, but this is a clear direction from the Congress to see that they meet this deadline.

Although the Office of Surface Mining is making strides in correcting many of the problems under this program, I still have a number of questions to put to Mr. Harris today. I am particularly interested in testmony on the following issues: Restrictions on States' ability to spend their share of the funds in a continuous and orderly fashion.

The States' role in determining priority projects.

The effect of the AML fund becoming an interest bearing account.

The effect of transferring administration of the rural abandoned mine land program directly to the States.

I welcome today other witnesses on this subject, and now I promised to turn to my distinguished colleague from West Virginia, Senator Jennings Randolph.

[The prepared statement of Senator Warner follows:]

Virginia's U.S. Senator

JOHN WARNER NEWS

U.S. Senate Washington, D.C. 20510
(202) 224-6290

OPENING STATEMENT

SENATOR JOHN W. WARNER

OVERSIGHT HEARING ON THE ABANDONED MINE LAND FUND

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

FEBRUARY 24, 1983

In 1977 Congress passed a unique piece of legislation which attempted to balance the production of needed domestic energy resources with the protection of our nation's fragile environment.

The Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) established a nationwide program to protect society and the environment from the adverse effects of surface coal mining and to assure a coal supply essential to the nation's energy requirements.

Implementation of this necessary legislation has not been without controversy, but it has been instrumental in drawing attention to the environmental effects of mining and the importance of restoring lands now being mined.

The Interior Department's Office of Surface Mining has notified me that Virginia will receive $2,326,523 in federal funds to help the state administer and regulate the surface effects of coal mining and provide assistance to small operators' in putting together their mining permit applications. I know this money will be put to good use in Virginia's coal counties in implementing the Surface Mining Act.

Of these funds, $1,576,523 will pay half of Virginia's administrative and regulatory expenses. These include: travel, equipment, supplies and salaries for state employees for 1983. This helps support 92 employees, including 40 state inspectors. The remaining $750,000 is for the state's Small Operator Assistance Program (SOAP). Those producing less than 100,000 tons of coal annually are eligible for assistance. Among the uses of the funds are technical evaluations of the possible hydrological consequences of mining and the results of test borings or core samplings.

The Surface Mining Act also attempted to address post mining practices by creating the Abandoned Mine Land Reclamation Fund (AML). This program was established to reclaim land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas.

The AML program is funded by a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 percentum of the value of the coal at the mine, as determined by the Secretary.

From this fund, states having an approved Title IV regulatory program and an approved reclamation program, receive 50 percent of the funds collected in their state.

By the end of FY 1982, approximately $904.4 million was accumulated in the AML fund, and there was an unappropriated balance of about $513.5 million. The unappropriated balance for the state share was about $360 million.

(MORE)

There have been unfortunate delays in expending monies under the state 50 percent portion of the fund. These delays have meant that life-threatening and property-threatening projects have not been addressed.

A prime example of delay has been a project in my own state -- the Commonwealth of Virginia.

Dante, Virginia, had a life-threatening gob pile suspended over a hollow in which 160 people lived in 40 homes. Every rain brought threats of floods and mudslides to the people living in the community.

The Soil Conservation Service applied for funds on March 30, 1979, under the Rural Abandoned Mine Land program. When no funds were forthcoming by November 1981, the state took over the program and applied on December 8, 1981 for a grant under the state 50 percent portion.

Finally on February 22, 1982 -- almost three years from date of first application -- the project was approved and funded.

For three years the residents of this hollow faced a clear life-threatening situation with no corrective action!

--$360 million lying fallow when life-threatening projects are not being acted upon!

--$360 million not being utilized on projects which will put unemployed miners back to work at a time when unemployment in the coal fields is at record levels!

It is estimated that $360 million will employ from 7,000 to 15,000 miners depending on the particular projects funded. These monies must be utilized for the purpose set forth by the act and employing the coal field workforce!

Because of my deep concern about these types of delays, I joined with Senator Ford in cosponsoring an amendment in December 1982 to the Continuing Resolution which requires the Office of Surface Mining to release money for grants within 60 days of receipt of a completed abandoned mine reclamation fund grant application from any eligible state.

I understand that the Office of Surface Mining has already been working towards this goal, but this is a clear direction from the Congress to see that they meet this deadline.

Although the Office of Surface Mining is making strides in correcting many of the problems under this program, I have a number of questions I want answered today. Legislation may well be necessary to correct the deficiencies in this program so that we can clean up the environment and put people back to work.

(MORE)

I am particularly interested in testimony today on the following issues.

- -- Restrictions on states' ability to spend their share of the funds in a continuous and orderly fashion.
- -- The states' role in determining priority projects.
- -- The effect of the AML fund becoming an interest bearing account.
- -- The effect of transferring administration of the Rural Abandoned Mine Land Program directly to the states.

I welcome the witnesses this morning and am looking forward to your testimony so that I can better determine if legislative adjustments in the AML program are necessary.

-0-

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Randolph. Mr. Chairman, it is a personal privilege for me always to be with you my, shall I say, constructive colleague from the Commonwealth of Virginia.

I never get upset by those that say West Virginia made a mistake by becoming a separate State and leaving the Old Dominion, but I'm always reminded that it was the good judgment of Abraham Lincoln. He proclaimed West Virginia a State. It was said by some that it was unconstitutional to do that, but it's never been tested in court. We do remember there is no difference of opinion by those who are citizens of Virginia and those of West Virginia. In fact, those of Kentucky and Ohio and many of the individuals who are not just actually on the subcommittee, but are certainly very cognizant of the critical problem that we have in reference to the subject matter on which we speak this morning.

You said that I should say something about this morning. I don't know just why, but you did say you wanted me to mention that this was another day. The only word that I could give which would not even be worthy of the record, but might, in a rambling fashion, be included. I have a custom. It may be a very unnecessary one. Each morning after I rise I stand and look out the open window to the snow storm, to the sunshine, to the driving rain, and I say not quietly inside me that I can hear the words, but I say them aloud, this is not just another day; this is a new day.

I think that is not just a statement that anyone could make at a witness table, or even quietly to himself or herself, but there are new challenges which are ever present even though the subject matter may change from time to time and its impact on the economy on one State or another.

I've had the privilege this morning of meeting a gentleman that I was with last year down at Virginia Polytechnic Institute and State University. I often wonder how it can be an institution and a State university at the same time. It's a wonderful accomplishment. We were barely a college where I graduated from. But, very frankly, as the old mountaineer would say if he was commenting on such a long name, he would say you can't hardly get that no more.

Well, they have it there, and I remember I was on that campus and we were talking about the very same subject that we are discussing here today. I appreciate, I say to you, John Warner, and I say to the Senator Wendell Ford that I come here on this, a new day, and that's what it is, with a challenge that all of us must have.

We have knowledgeable witnesses, much more knowledgeable than a Senator from West Virginia, who hour by hour almost are working on this subject matter. So, with your permission, I will summarize. I will speak very briefly in my remarks and then ask the privilege of inserting the full text of what I shall say so that it may be made a part of the proceedings if that's agreeable.

Senator WARNER. That will be entirely agreeable.

Senator RANDOLPH. Thank you very much.

I recall it has been said over and over, "A diamond is a lump of coal that made good under pressure." There is certainly pressure on the coal industry right now, but I won't go into that subject.

I'm not sure that we can say this subcommittee will quiet pressure, but if it does, I want you to hit the right seams. That is very important in mining coal, and that is, of course, a subject that concerns perhaps not the deep coal, but certainly the surface mining program.

Some jobs, I'm not sure how many, might be forthcoming. Those jobs will be truely be diamonds given to the economy of your State and other States.

In almost 50 years of public service, it will be when I first came here—I was sworn in on March 9, 1933. Those were the days Senator Ford would remember when the President was sworn in on March 4, and then the House came in 5 days later. I'm not certain that it was a good practice, but one of the goals that I shared with others has been to see and hopefully prove that public works are the bricks and mortar. They are the bricks and mortar programs of this Government of yours and mine.

There will be those here from Ohio today. How do we move across the Ohio River? We move across on a bridge. We are interested in building bridges and not in closing doors between the two States that are on the west and the east of the Ohio River.

These are the programs that include the water projects, the sewerage system, the dams, the inland waterways, and if there was ever a time when we needed to improve the locks and dams on the Ohio, on the Mohican, a stream that runs north, not south, we need to do that at the present time because on the bosom of these inland waterways moves the product of the mine and the factory and the field, not just by rail. I do not speak against rail, but these inland waterways are a real vehicle if we keep these locks and dams in shape.

In our Committee on Environment and Public Works recently, Mr. Chairman, Senator Ford, we had the testimony give that the Corps of Engineers has to lay off so many persons. I understand that, but I said at the last hearing you've got to see who you lay off. We can't even keep those locks operable without the men that have been working with them through the years. New people can't come in, even in a smaller group, and operate them because they are so antiquated. So we've got to be very practical in all these matters that concern the dams, the inland waterways, and also that is true in a degree in public buildings.

Senator **Warner**. Could I interrupt the Senator to include the deepening of America's ports. Now, that's a subject before your committee. We have spoken about that many times.

Senator **Randolph**. Yes, and you have been a very helpful witness. But we will remember that our committee did not fail to report something, but it got unwound in user charges.

Senator **Warner**. Your colleague and I will be putting in a piece of legislation here in a few days, and we hope you will look favorably upon it.

Senator **Randolph**. I could say almost without reservation I would look favorably on whatever you and Senator Byrd would be introducing that is on this subject.

So this Subcommittee on Energy and Mineral Resources is in the process of analyzing how the Office of Surface Mining can work with the States to reclaim the abandon mine lands of this country.

I believe the abandoned mines lands program, we call it AML, properly administered can and will provide the benefits in the traditional public works program, the very best that's in it.

Governor Rockefeller of our State has indicated I believe as late as Thursday of last week in testifying before the House Subcommittee on Energy and Environment that West Virginia has over 100,000 acres of mined lands which need reclamation. West Virginia presently has 25,000 coal mining and associated industry employees not at work, Mr. Chairman, but out of work. Twenty-five thousand in that one industry unemployed at the present time. That's 33 percent. Thirty-three percent of an entire State labor force, not just mining force. It certainly accentuates the need for us to move as quickly but effectively as we can with the AML program.

Now the administration and I will move quickly on the budget for fiscal year 1984, proposing approximately $219 million. But receipts for the same period of time will be around $231 million. Certainly when I think of Governor Hirschel of Wyoming who testified with Governor Rockefeller, he has estimated that every million dollars expended in AML funds would create 50 full-time jobs.

Now, if $360 million of the unappropriated State balance was made available for State shared programs, some 18,000 jobs would be created, that is on a national basis. Certainly the members of the subcommittee knowledgeable on all these matters working with the Appropriations Committee copes with such a program must try, and I know you will try to assure that there is enough room allowed in this year's budget. Not that you just have to get your head in, but you have to get your body in to get the budget resolution with the assurance that appropriations are large enough to take care of programs that each State—and the States will vary, of course—could assemble.

Now, there are members that have stated that appropriations levels based on current State program estimates are more than enough. I disagree. Many projections have been understated, and prospect lists will grow significantly in States that I've mentioned. If we are allowed to fund their priority, there will be two and three projects while first priority projects are ongoing. Reclamation of burning refuse piles, sealing mine entries, and subsidence projects, often do not require large complements of equipment, or even of manpower. Lower priority prospects to restore basic land and water resources are much more labor intensive. They require the bulldozers as we know, the backhoes, the loaders and workers to operate these machines as well as to reseed, mulch and plant trees in the reclaimed areas.

I am going to stop in just a moment because I know of your time problem, but I must say that West Virginia, including projects which will be ready in fiscal year 1984, can implement—not take apart—but implement a $65 million effort.

Now, some wester, I call that Wyoming for the moment, and easter, and I would designate that as Kentucky coal States, can handle this program level or more. Given this situation room should be allowed for a $360 million State sharing program; at least $200 million in Federal discretionary—I use the word discretionary—authority for projects that have priority, but they are of a national importance, not just State in a rural abandon mine reclamation program carried out in the soil conservation service district.

I remember in 1935 when we passed the original Soil Conservation Act. I'll never forget that. I remember those skys, dark. The dust flowing, not only there, but will you believe it, Mr. Chairman, the dust fell from those ravaged lands over the city of Washington, D.C. I shall never forget that. And so we brought into being the Soil Conservation Service. I was privileged to speak, support and vote for it.

Over and over again sometimes we make valuable contributions legislatively of having put them on the books which was necessary. Sometimes we fail to followthrough in the years that are to be, and this is a crucial time in this country. We must not forget the programs that are in being, but must have the dollars to accomplish reclamation and employing objectives. This contributes to economic recovery. I think the President of the United States would want that to be a part of the recovery program. It will not raise taxes, but effect a movement toward a balanced budget. There might be a difference of opinion.

Now, although we're requesting the Secretary of Interior to see that States use their unemployed heavy industry population in these reclamation projects as suggested in Senator Byrd's Coal Mining and Construction Job Stimulus Act of last year, I think that is an excellent necessary step to improving the AML program. More needs, of course, to be done.

Representative Rahall, of course, with his program of Abandon Mine Reclamation Improvements Act, that was introduced only yesterday, would provide for streamlined State delivery system.

The Secretary of Interior would automatically distribute. The States would approve title IV and V programs, 50 percent of the reclamation funds collected in those States.

I said at the beginning and then I violated it, that I would summarize my statement. From this point on and moving back and restating what I've already said, with your permission, Mr. Chairman and members of the committee, I would want you to just know how strongly I feel about the need to turn America around, not around really, but turn her up again. We can do that with programs of this kind. We can make a healthier and wealthier Nation in which the coal fields of our Nation will be contributors. Thank you very much.

[The prepared statement of Senator Randolph follows:]

From the office of

SENATOR JENNINGS RANDOLPH

of West Virginia

3203 Dirksen Building, Washington, D.C. 20510 **Telephone: 202-224-6472**

Statement of Senator Jennings Randolph
Abandoned Mine Lands Program
Subcommittee on Energy and Mineral Resources
Thursday, February 24, 1983
10:30 a.m.

Mr. Chairman,

I appreciate this opportunity to testify before your Subcommittee. Some time ago I recall reading that, "A diamond is a lump of coal that made good under pressure." Maybe if the Subcommittee applies pressure to the right seams of the Surface Mining Act today, some jobs might be forthcoming. Those jobs would truly be diamonds given our State's economy.

In almost fifty years of public service, one of my goals has been to see that public works, the "bricks and mortar" programs of the Federal government--bridges, water and sewage systems, dams, inland waterways and public buildings were constructed, maintained and repaired. Today, your Subcommittee on Energy and Mineral Resources is meeting to analyze how the Office of Surface Mining can work with the States to reclaim our Nation's abandoned mine lands. I believe the Abandoned Mines Lands program (AML), properly administered, can provide the same benefits as the traditional public works programs. These include utilization of our heavy equipment, logical use of applicable operator expertise and knowledge, employment of skilled workers in this case from the mining and construction community, and the opportunity for States to cooperate with private concerns to advance research and development in specific areas relating to the land reclamation and water quality control objectives of Title IV of the Surface Mining Control and Reclamation Act of 1977.

As Governor Rockefeller of West Virginia indicated last Thursday before the House Subcommittee on Energy and the Environment, our State has over 100,000 acres of mined land which needs reclamation. West

Virginia presently has 25,000 coal mining and associated industry employees out of work. This represents 33 percent of our State labor force. It accentuates the need for us to have an effective AML program. West Virginia has met the challenge, and was one of the first States to have a reclamation plan approved by the Office of Surface Mining. We have, to date, completed six reclamation projects and have twelve more under construction.

I am now convinced, as are Governor Rockefeller and Dave Callahan, our Director of the Department of Natural Resources, that the Office of Surface Mining, under the leadership of Mr. James R. Harris, is committed to the state primacy concept. Agency personnel seem sincere in their desire to address specific state problems in a positive and cooperative way. Unregulated coal mining, however, was conducted for over 100 years while the regulatory apparatus we review today is relatively new, so naturally the Abandoned Mine Land program needs refinement and continued oversight activities.

Through the assessed tax on coal production to finance the reclamation of abandoned mines, we have now accumulated in the Federal Treasury $904 million in receipts. The State 50 percent share at the end of fiscal year 1982 was $452 million. To date, we have spent only $92 million of this amount.

The Administration budget for fiscal year 1984 proposes about $219 million, but receipts for the same period of time will be around $231 million. When every major coal producing state has achieved primacy thus eliminating Federal barriers to full implementation, it seems unwise to ask for an appropriation less than current receipts into the AML fund.

Governor Herschler of Wyoming, who testified with Governor Rockefeller last week estimated every million dollars expended in AML funds would create 50 full-time jobs. If $360 million of the unappropriated State balance, was made available for State-shared programs, about 18,000 jobs could be generated nationally. Such a program would directly reduce Federal expenditures for unemployment insurance that twelve coal states are now borrowing from the Treasury Department for unemployment benefits. Estimates are for every million dollars of AML program monies spent, $200 thousand in payout of annual unemployment benefits could be eliminated.

The members of this Subcommittee and we as interested individual Senators must try to assure enough room is requested in this year's budget resolution to accommodate an appropriation large enough to handle programs each state has been assemblying. West Virginia, including projects which will be ready in fiscal year 1984 can implement a $65 million effort. Some Western (Wyoming) and Eastern (Kentucky) coal states can handle this program level or more. Given this situation, room should be allowed for a $360 million state-shared program, and at least $200 million in Federal discretionary authority for priority projects of national importance and the Rural Abandoned Mine Reclamation program (RAMP) carried out in the Soil Conservation Service districts.

Some members have stated that appropriations levels based on current state program estimates are more than enough. I feel, however, many projections have been understated, and prospect lists will grow significantly if States are allowed to fund their priority two and three projects while first priority prospects are ongoing. Reclamation of burning refuse piles, sealing mine entries, subsidence projects, often do not require large compliments of equipment or manpower. Lower priority prospects to restore basic land and water resources are much more labor intensive, requiring bulldozers, backhoes, loaders and workers to operate those machines, as well as to reseed, mulch, and plant trees in reclaimed areas.

What must be done to accomplish the reclamation and employment objectives which would contribute to economic recovery without raising new taxes or affect movement toward a balanced budget if we experience recovery?

The question was addressed in a general manner last fall when Senator Robert Byrd, our Democratic Leader introduced the "Coal Mining and Construction Job Stimulus Act," (S. 2977). It highlighted the necessity for dispensing AML funds through an unencumbered State delivery system to reduce a then high, and now staggering 17% unemployment rate in our coalfields, construction, and other heavy industry.

Yesterday, Congressman Nick Rahall introduced the "Abandoned Mine Reclamation Improvement Act," which will provide for that streamlined State delivery system.

Program delays because of length of time taken to approve State grant requests, and whether grant requests for entire State allotments could then be shifted from one project to another would be eliminated. The Secretary of Interior would automatically distribute, to States with approved Title IV and Title V programs, 50 percent of the reclamation funds collected in those States. The OSM would retain oversight and auditing capabilities, as well as, authority to place such monies in a suspense account if a State was not using the funds as intended by Title IV of the Act.

The bill would permit interest to accrue to amounts deposited into the Reclamation "trust fund". Every Federal trust fund bears interest--those our Committee has helped fashion including, the Highway Trust Fund, the Inland Waterways Trust Fund, the hazardous waste and toxic spill "Superfund," and others such as the Airports and Airways Trust Fund. These interest payments would substantially reduce any possible initiative to extend the 15 year life of the reclamation fee to meet program needs. It is ironic, that during this recession we have required states to pay interest on funds borrowed to meet weekly unemployment commitments, but refuse to pay coal states interest on fees collected for reclamation, when such interest could help create more labor intensive projects capable of reducing unemployment in those States.

Mr. Chairman, I believe the provisions described above give the Subcommittee a good plan for further action on both mining reclamation and jobs. It will improve innovative management of State programs because of less Federal control. It assures the simple jobs, which always seem to get put off because there will be time to do them later, will be completed. It will reduce the probability of established technology persisting in spite of new technology in water quality control and land reclamation. And, finally it might make the Abandoned Mine Land program an example of one Federal program that can be predictably scheduled and kept within budget.

Senator **Warner**. Senator, we very much appreciate the insight that you have provided this morning in your usual colorful and informative way, and we appreciate you taking the time to join us here in representing your constituents, portraying very vividly the plight we face with this unemployment situation. We are hoping to straighten it out.

Mr. Ford, do you have any comments?

Senator **Ford**. I have no comments at this time. I prefer to get along with the witnesses and ask them some questions.

Senator **Warner**. The Senator from Montana?

Senator **Melcher**. I only want to say at a time when there is a deficit of huge magnitude and we are trying to have economic recovery, it seems outrageous that the abandoned Mined Land Reclamation Fund can sit in the Treasury, available for use and never be used. The Federal Government is appropriating money for a number of programs which requires that money be borrowed in the market place in order support our Federal expenditures. Yet, here is a rather large fund accumulating a substantial amount of money every year and it's somehow frozen.

Mr. Chairman, these oversight hearings, are entirely essential at this time to make sure that we have some direction and that the Department of the Interior release some of these funds, as intended by Congress, for the purpose of reclamation work. The work is there and it's being delayed, stalled, ignored. I am delighted that you are having these hearings.

Senator **Warner**. Thank you. We hope to achieve some of the answers today.

We will step aside from the order of witnesses to hear briefly from my colleague from Virginia, Congressman Boucher who is here for the dual purpose of making his own comments as well as introducing Mr. Danny Brown, the commissioner of Virginia Division of Mined Land Reclamation.

STATEMENT OF HON. FREDERICK C. BOUCHER, A U.S. REPRESENTATIVE FROM THE STATE OF VIRGINIA

Mr. **Boucher**. I appreciate the opportunity to appear before your subcommittee, and I wish to express my appreciation to you and the members of the subcommittee for your efforts to promote the use of the abandoned mined land reclamation fund and to enhance the availability of the fund for projects chosen by the States from which the fund is generated.

I am very pleased today to appear with Mr. Danny Brown, who is the commissioner of the Virginia Division of Mined Land Reclamation. He is here today representing the Governor of Virginia and speaking for the best interest of our state and of the coal producing areas of southwest Virginia which it is my pleasure to represent. The concerns he brings before you about the difficulties encountered by states hoping to use these funds for worthwhile projects are concerns which I share.

Just last week, I met with officials from the county of Wise, Va., where coal operations in the past have adversely affected the community's water supply. Despite the best efforts of local officials over a number of years, much of that county is still without the dependable supply of water which is crucial to its health and welfare and vital to its economic future.

Commitments have already been made within the state to help fund a water supply project for the county, but abandoned mined land reclamation funds which have been collected and deposited in the treasury have not been freed up to assist Wise County with its urgent need. That county, by the way, had a December 1982 unemployment rate of 16.8 percent.

By the same token, thanks to the generosity of a private corporation in Virginia, Penn Virginia Resources, very promising work has been done through Virginia Polytechnic Institute and State University's Powell River project. Work already completed shows great promise for viable and profitable alternative postmining uses for surface mined land. Research and demonstration work indicate a number of exciting possibilities for mining and reclamation technologies that would render land available, and indeed very suitable, for housing, farming, and other important uses are available to us today. Continuation of that work, which would no doubt yield benefits far beyond Virginia, could be ensured by greater flexibility and availability of the abandoned mined land fund.

I am sure that I need not remind you that unemployment in the nation's coal-producing areas has reached staggering levels—levels that demand our immediate attention and our very best efforts at forging workable solutions.

The use of the abandoned mined land program toward that end would provide some immediate jobs and, therefore, deserves your very serious consideration. Creative and vigorous use of those funds—funds already collected—may serve the dual purposes of enhancing the public health and environment and putting many of our citizens back to work.

Thank you again, Mr. Chairman, for this opportunity to appear with Commissioner Brown from Virginia, and I would again say that the concerns which he will voice to the subcommittee today are concerns that I share, and I hope the subcommittee will act favorably upon his recommendations.

Senator **Warner**. Thank you, Mr. Congressman, and I appreciate very much your coming, and I am sure the constituents of your district and my constituents also will take some pride in the fact that we have both directed our attention to this effort.

Now we will hear from Mr. Harris.

STATEMENT OF JAMES R. HARRIS, DIRECTOR, OFFICE OF SURFACE MINING—RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY STEVE GRILES, PETE CULP, AND BILL SCHMIDT

Mr. **Harris**. Mr. Chairman, I appreciate this opportunity to appear before your subcommittee this morning. I feel like I'm among friends. I first went with you, Senator Warner, on field hearings shortly after I came to this office down in Richlands, Va. I thought those hearings were productive. I felt that I've had extremely good support from you and Senator Ford. Senator Ford has been most kind in his remarks about the work I've done in this office. I first met Senator Melcher at my confirmation hearings, a man capable of asking some pretty tough questions. I hope he is convinced the committee made a right move at that time.

I would like to read into the record a prepared statement that I have this morning. I would be available to answer any questions of the committee. I would like permission, if possible, at the close of your hearing today to make some remarks that might shed a great deal of light on questions that may be raised during the hearing. It depends upon your time schedule.

It is a pleasure to be here today. I would like to take a few minutes to summarize our accomplishments since your last oversight hearing in September 1981.

The reorganization of the Office of Surface Mining was completed last year. This reorganization reflects the proper role of the OSM in cooperating with and assisting the States in administering their programs and carrying out the well-defined oversight role of the OSM. We believe that, for the first time, the Office of Surface Mining is administering a program of nationwide policy, with decisionmaking resting with well qualified senior staff members in 13 field offices and 2 technical centers, properly located throughout the coal mining regions of the country and with the policymaking function vested in the Office of the Director.

The technical centers, staffed with capable experts in the disciplines necessary to offer the needed technical assistance to the States and the OSM's field offices, are functioning well and growing steadily in their capabilities.

Thus, the OSM's reorganization, apparently doubted by some and damned by a few, is proving to be sound in basic concept and is proving to be even more sound in actual performance.

In addition to the completion of our reorganization, we have made great strides in our regulatory reform effort. The notice of availability of an environmental impact statement covering those of our proposed regulatory changes subject to an EIS was announced in the Federal Register on January 20, 1983. It gave detailed evaluations of the impacts of those proposed rule changes and set out the preferred alternatives as drafted regulations to be reviewed by me and Dr. Daniel N. Miller, Jr., the Assistant Secretary for Energy and Minerals, before a final determination is made on any new regulations. The publication of the final rules, when decided upon, will virtually complete the regulatory reform undertaken by this agency almost 2 years ago.

With the flexibility provided in the Act, and the related flexibility we are providing through regulatory reform, the States are able to administer regulatory programs we believe to be clearly superior in their application to the rigid, mirror-like programs approved by this agency in the past.

On August 3, 1982, the fifth anniversary of the passage of the act, the Secretary signed and approved the last two State programs which were pending for major coal-producing States. We at OSM take a great deal of pride in this accomplishment.

When I came to this office, states containing only 11 percent of the facilities covered by Public Law 95-87 had approved programs. I am happy to report that under this administration we have approved title V programs in states containing over 88 percent of the facilities regulated by the act, leaving less than 1 percent of those facilities under direct Federal scrutiny.

Alaska, Washington, and Georgia are the only active coal mining States without approved title V State programs. Alaska's program has been submitted. Our review of that program has been completed and it will be submitted to the Secretary for his review before the end of this month. Washington and Georgia both have Federal regulatory programs at their own request.

Mr. Chairman, under this administration, OSM has made giant strides toward becoming the agency that you and Congress envisioned at the time of the passage of the Surface Mining Control and Reclamation Act.

Now I would like to turn to the title IV provisions of the act. That portion of the act is expressly designed to address the reclamation of previously unreclaimed mined lands which were mined prior to the passage of Public Law 95-87.

When I came to office, only two State AML programs had been approved. By law, the approval of the title IV State program, addressing AML problems, had to await the Secretary's approval of that State's title V program. As a result, there were no grants from the State portion of the AML fund prior to this administration. Given the reluctance of many of the States to pursue title V approval under the then almost inflexible Federal regulations, the approval of additional programs was fast coming to a standstill.

The early adoption of this administration's "State Window Regulation," coupled with the promise of reasonable regulatory reform and extensive OSM missionary work with industry people and State officials, brought about a renewed interest by those States previously reluctant to pursue adoption of approvable title V programs.

After we were able to get the program moving again, title IV programs were submitted and subsequently approved by the Secretary for 17 additional States.

On October 12 of last year, at a meeting of OSM's senior staff from the field offices, the technical centers and the Washington office, I set a policy directing that administratively correct grant requests from the States were to have a "turnaround time" of no more than 60 days from submission to approval, a policy which is being adhered to. I know that you and Senator Ford back that up with language in the appropriations bill and I always appreciate that kind of help.

In an effort to accelerate this program, the OSM has offered technical assistance in the grant application process to all of the title IV program States. A number of the States have availed themselves of that assistance. One of the problems that impedes the program, in a number of States, is their cumbersome and time-consuming contracting process, which, if streamlined, could cut delay time to a fraction of what it is today.

Although OSM has worked diligently to insure expeditious approval of plans and grants, we have realized that States are entitled also to a full explanation of the basis on which the AML program will operate. Obviously, the program is grounded in the provisions of the act and implemented through the regulations we have published. Beyond that, however, are the practical questions dealing with distributions from the fund—how much will a State receive, under what conditions, for what purpose. In order to address such concerns and provide States guidance that should help them better plan their reclamation efforts, OSM developed the Federal AML policy, which I would like to submit for the record.

[The AML policy follows:]

Date Prepared JAN 21 1983

STATEMENT OF ABANDONED MINE LAND POLICY

The Surface Mining Control and Reclamation Act (Act) establishes the authority of States/Tribes to administer reclamation programs using monies available as a result of the deposit of reclamation fees into the Abandoned Mine Land Reclamation (AML) Fund. It is the policy of the Director of the Office of Surface Mining (OSM) that, within the constraint of total revenues projected to be collected over the life of the Fund, monies from the Fund be applied to render benign both those conditions most hazardous to the welfare of the public and those representing most severe sources of environmental damage from past mining. (NOTE: Use of the word "Fund" throughout this document refers to all monies, both State/Tribal-share monies and Secretarial-share monies). The significance of this position becomes apparent when one compares the resources to be provided by the Fund with the magnitude of the Nation's reclamation problem. It is estimated that approximately $3 billion will be collected over the legislated 15-year life of the reclamation fee. However, the total cost of correcting the damage associated with past mining has been estimated at up to $30 billion.

Delineation of the fundamental legal and administrative positions relating to this policy follows.

STATUTORY AUTHORITY AND REQUIREMENTS:

In Sections 402, 403, 404, and 409, as summarized below, the Act sets forth, prioritizes and limits the reclamation purposes of the Fund.

(1) Section 404 limits eligibility for reclamation expenditures to coal-related problems resulting from mining which ceased prior to August 3, 1977.

(2) Section 402(g) provides that the Secretary may withdraw and subsequently redistribute any State/Tribal-share monies which have not been expended by a State/Tribe (or by OSM on behalf of a State/Tribe) within three years of allocation (which occurs automatically and annually when collected monies are deposited into the Fund). The Secretary may expend these withdrawn monies in any State/Tribe containing eligible areas, including that State/Tribe where the monies originated.

Section 402(g) provides for discretionary Secretarial approval of community impact assistance projects and for funding of these projects only from State/Tribal-share monies. Such projects cannot be funded until all coal and non-coal reclamation has been achieved within the State/Tribe.

(3) Section 409(a) provides for reclamation of non-coal-related reclamation projects.

(4) Section 409(b) provides that only State/Tribal-share monies can be used for non-coal-related reclamation projects.

(5) Section 409(c) specifies that, with the exception of non-coal situations relating to the protection of the public health or safety, State/Tribal-share monies first must be used to address all required reclamation with respect to abandoned coal lands. Priorities for funding coal reclamation projects are listed in Section 403.

Therefore, within a State/Tribe and except as noted above, coal projects must take precedence over non-coal projects (the latter projects are optional for a State/Tribe) and reclamation designed to protect the health, safety and general welfare of the public is to take precedence over other types of reclamation. Title IV of the Act (P.L. 95-87) contains more explicit and complete information regarding these authorities and requirements. To assist in the interpretation of OSM's policies, a composite list of the reclamation priorities contained in the Act is summarized in Attachment 1.

The basis for a State's/Tribe's AML program is its Reclamation Plan. Since State/Tribe Reclamation Plans are approved, modified and monitored on the basis of these same statutory requirements, there should be no conflict between those Plans and the provisions of this document.

APPROPRIATION PROCESS:

Under Section 401(d) of the Act, annual funding for the AML program is dependent upon Congressional appropriations. Following such appropriation of monies, OSM will ensure expeditious processing and approval of State/Tribal grants. The amount of such grants will be limited only by the State's/Tribe's need, and the assessed effectiveness and adequacy of State/Tribal program operations and staff resources as determined through the oversight process. To the extent possible, given the appropriation process and the States'/Tribes' ability to effectively utilize their monies, OSM actively will seek to make available annually an amount at least equal to the annual revenues of the Fund. Furthermore, since the current Fund balance is approximately three times the annual Fund revenues, annual grants could exceed annual revenues until the Fund balance and annual Fund revenues more closely coincide.

FUNDING MECHANISMS:

Section 402(g) of the Act authorizes two basic mechanisms for the accomplishment of reclamation within a State/Tribe. It authorizes the State/Tribal-share mechanism, through which 50% of the annual Fund revenues are allocated to and held in accounts in the United States Treasury for the States/Tribes pending appropriation, and the Secretarial-share mechanism, through which the balance of the annual Fund revenues are retained by the Secretary for both mandatory and discretionary program activities following appropriation. In the past, monies have been expended for AML reclamation activities through six separate delivery mechanisms. It is the policy of OSM that their use is to be as follows:

(1) State/Tribal grants. These will be the principal funding mechanism in the future. OSM believes that the States and Tribes are the entities best capable of assuring reclamation work is accomplished in the most cost-effective manner;

(2) Bureau of Mines reclamation projects. These were eliminated with the transfer of programmatic responsibilities and functions to OSM in February 1982;

(3) Rural Abandoned Mine Program (RAMP) projects funded through monies appropriated to the Department of Agriculture. Except for administrative costs for projects initiated in Fiscal Year 1982 or earlier, this funding mechanism was eliminated as of Fiscal Year 1983. Should the States/Tribes subsequently determine they are able and willing to undertake similar projects, they will be accomplished by the States/Tribes through monies included in State/Tribal grants;

(4) OSM Federal Reclamation Program projects accomplished through cooperative agreements with the States/Tribes. No new cooperative agreements will be initiated with States/Tribes that assume responsibility for the reclamation program authorized by Title IV of the Act;

(5) OSM Federal Reclamation (non-emergency) projects accomplished through Federal contracts. In the future, in recognition of the States'/Tribes' primary responsibility for non-emergency reclamation activities under approved Title IV programs, such OSM-approved projects will be initiated only in States/Tribes without approved Title IV programs; and

(6) OSM Federal Reclamation (emergency) projects accomplished through Federal contracts. In the September 29, 1982, Federal Register, OSM offered to States/Tribes a mechanism by which they might assume direct responsibility for emergency projects. Should a State/Tribe choose not to assume this responsibility, the Federal Reclamation Program will continue to be the mechanism through which emergency projects are handled for that State/Tribe.

ELIGIBILITY:

A State's/Tribe's eligibility to receive, expend and retain State/Tribal-share and Secretarial-share monies is dependent upon the status of both its Title V and Title IV programs, as illustrated in Attachment 2. OSM supports enactment of legislation which will permit Tribes to receive approval of their Title V and Title IV programs, thereby becoming eligible to receive Tribal-share monies and, as appropriate, Secretarial-share monies. In those instances where the Federal government assumes the responsibility for abandoned mine land reclamation for a State/Tribe, OSM also will assume the responsibility for assuring those States/Tribes annually receive their proportionate share of appropriated monies in accordance with the process described under "Fund Allocation." However, these monies will be used to implement only a limited reclamation program as described in Attachment 2, and not the comprehensive program available to States/Tribes which have both Title V and Title IV approved programs.

FUND UTILIZATION:

Section 402(g)(3) of the Act authorizes the Secretary to supplement State/Tribal-share monies with Secretarial-share monies, for use in coal-related reclamation, to ensure national reclamation program needs can be addressed in and by any State/Tribe. This provision offers a means for at least partially offsetting inequities existing between the revenues deposited annually in certain State/Tribal-share accounts and the magnitude of the inventory within those States/Tribes of lands and water affected by past mining.

OSM believes maximum reduction in the nation's most severe AML problems will be realized by:

1. Providing Secretarial-share monies in proportion to a State's/Tribe's total need for monies (to correct inventoried Priority 1 and 2 coal-related problems) as compared to its projected State/Tribal-share revenues over the life of the Fund (i.e., distributing these monies at least to those States/Tribes with inadequate State/Tribal-share monies to correct all inventoried problems); and

2. Encouraging use of the most cost-effective reclamation planning, practices and methodologies possible. To this end, and in States/Tribes with approved Title IV programs, OSM will, upon request, develop design specifications to facilitate expeditious implementation of approved projects, and also provide technical assistance in support of project monitoring activities.

In order to achieve a consistent reduction in the most severe damage resulting from past mining, OSM will ensure, through the State/Tribe Reclamation Plan and grant approval processes, that all monies from the Fund are generally applied in a manner closely following the order of priorities set forth in the Act. While economy of scale and other factors may result in lesser priority projects occasionally being undertaken in conjunction with higher priority projects, the effect on achievement of the Secretary's goal is not expected to be significant.

OSM has carefully considered the question of the proper treatment of research and development projects. It is recognized that reclamation technologies have gone unchanged for many years, and that research would provide new and improved reclamation technologies from both a technical and economic standpoint. OSM also recognizes it is not reasonable to encourage a proliferation of projects in a number of States/ Tribes which may direct limited Fund revenues away from actual reclamation work or result in duplicative efforts.

OSM, therefore, believes a limited, coordinated coal-related research and development program, funded from Secretarial-share monies, to be the reasonable approach. Program needs submitted by individual States/Tribes would be prioritized by a central review panel comprised of State/Tribal and OSM representatives. Projects selected by need and availability of monies would be administered by either individual States/Tribes or OSM.

FUND ALLOCATION:

Since passage of the Act, various bases have been proposed for the allocation of the revenues of the Fund. Options have included use of statistics on population and past coal production, as well as various general measures of damage from past mining. These proposals have not addressed the true measure of the actual national reclamation problem. In order to more directly focus on the magnitude and specific nature of the problem, that is, on the number and types of abandoned mine land sites, OSM initiated an inventory of coal mining-related health, safety and general welfare problems on such lands. This effort, has yielded a relatively complete picture of the most severe problems at a point in time--a picture which can be changed by the States/Tribes in accordance with procedures established by OSM. By periodically modifying the inventory information to eliminate inaccuracies and omissions, the States/Tribes and OSM will ensure its evolvement into a useful and valid tool for program planning and monitoring, grant application review and approval, and allocation of the Secretarial-share portion of the Fund.

The system for retrieving and modifying inventory data is expected to be fully operational in the Spring of 1983. At that time OSM will begin using that data for the purpose of Fund management. It is anticipated that at least annually, in addition to its regular fiscal year grant and periodic reports on the current status of pertinent Fund-related collection activities (e.g., fees collected, fees owed, delinquent mines), each State/Tribe will be provided a lump-sum projection of total monies it may expect to receive over the remaining life of the Act. A State's/Tribe's long-range program planning and staffing decisions, and its decisions concerning the size and composition of grant requests, can then take into account the estimate of available project monies.

To arrive at the estimate, the process described below will be followed.

1. A projection will be made of total revenues to be deposited into the Fund over its remaining life. These projections will be based on coal production estimates compiled by the U.S. Department of Energy.

2. Total projected revenues will be appropriately divided between the State/Tribal-share portion of the Fund and the Secretarial-share portion of the Fund.

3. Current balances in the State/Tribal-share portion and Secretarial-share portion of the Fund will be added to the respective share's estimated future revenues.

4. Appropriate deductions will be made from the Secretarial-share portion for estimated administrative and programmatic costs. Programmatic costs in the case of Secretarial-share monies could consist of such items as SOAP, Federal Reclamation Program costs, Federal research costs, RAMP and Federal Cooperative Agreement costs for yet-unfinished projects, and emergency project costs.

5. All available remaining monies will be apportioned to each State/Tribe in proportion to the cost of reclaiming its Priority 1 and 2 projects listed in the inventory. At this time, and in recognition of the remaining 10-year life of the reclamation fee, this distribution, for Section 403 and Section 409 projects, will not be less than each State's/Tribe's estimated 50%-share of the Fund.

Mr. Harris. This is the first such policy generated by this agency and is scheduled for publication and distribution this spring. This policy represents a tremendous effort on the part of both OSM's senior staff and representatives from the States and tribes. Meetings were held with, and correspondence was received from State and tribal representatives, and numerous comments were submitted and carefully considered prior to preparation of the final version of the policy. We believe the policy will insure the reclamation goals of the act are achieved and that effective use of the limited resources will be realized.

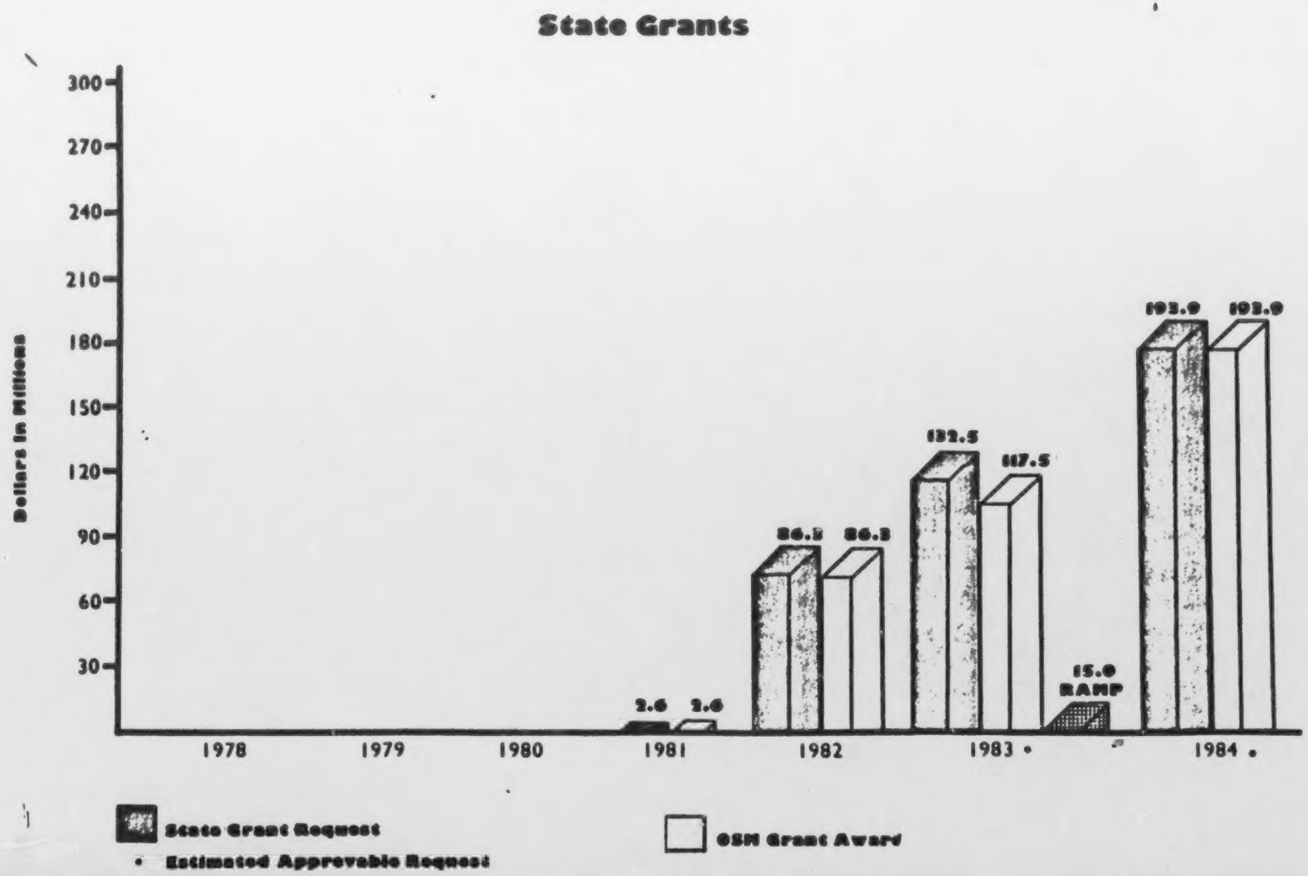
Of equal importance, it will permit distribution and utilization of fund revenues in a manner which insures all States have an opportunity to correct their most severe problems. Equitable funding of state AML programs is of critical concern to OSM, as it is, of course, to the States.

Consistent with this, however, is the flexibility to pursue lower priority projects where such an approval reduces costs. For instance, our definition of "project" in the AML regulations allows groupings of similar types of sites or sites in a geographic area. This could include a variety of priorities.

Another example is an area where a high priority problem exists in conjunction with lower priority problems. We urge the States to treat this entire problem area to avoid the need for future disturbances of the land for reclamation purposes.

In short, the act does provide flexibility in section 403, and I will personally urge all States to utilize this flexibility to the fullest extent possible. However, our basic concern, and, we believe, the basic concern of the Congress, is taking care of those problems which pose a threat to the health, safety, and general welfare of our people. The abandoned mine land tax is a burden on our coal industry's export potential and represents additional cost to every consumer who uses electricity from a coal-fired utility or who uses domestic steel. Until we determine that our more serious environmental problems can be and are being taken care of with the money from this 15-year tax, it would be irresponsible for me to endorse a policy which would neglect our more serious problems in favor of some alternative goal.

In a number of hearings, both the Secretary and I have repeated our commitment to funding the State AML programs to the levels that can be utilized by the States.


State Grants
Dollars in Millions
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210
180
150
120
90
60
30
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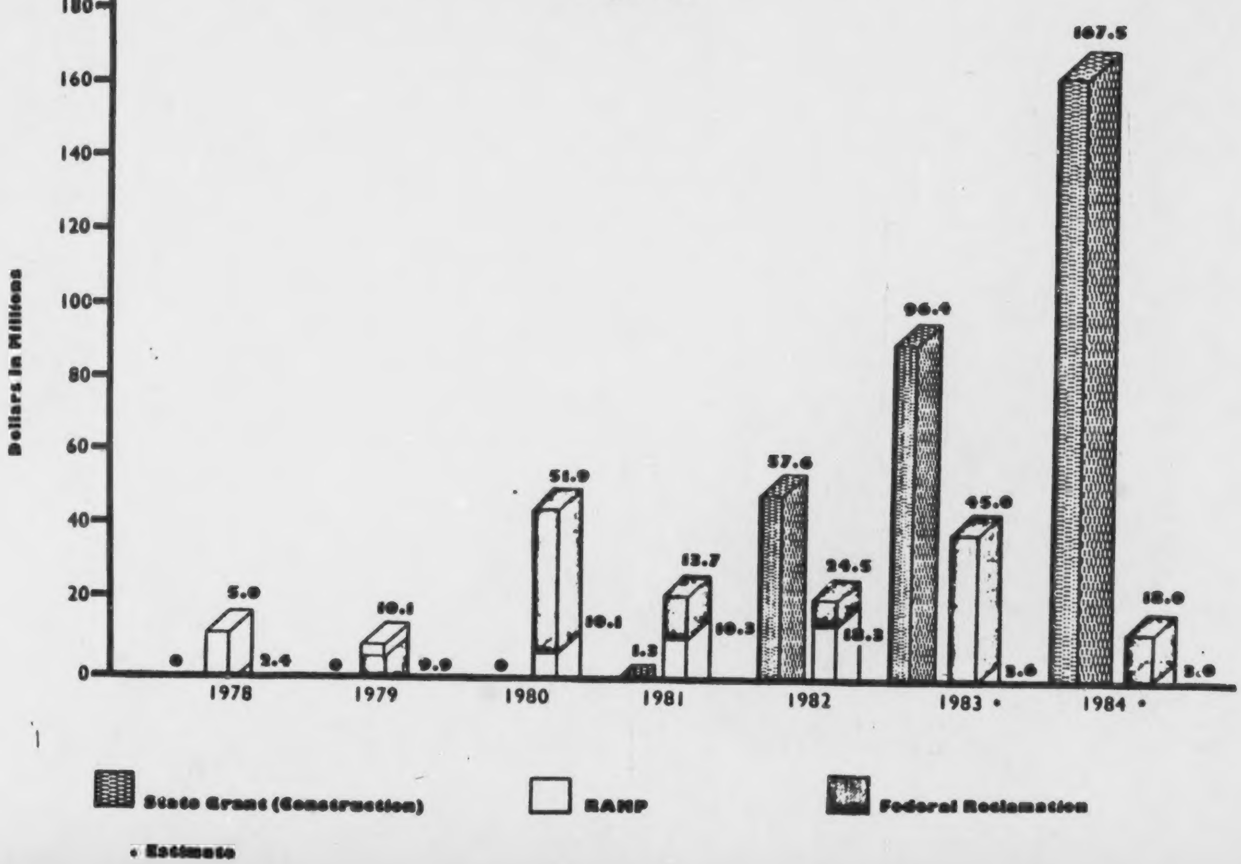
1979
1980
1981
1982
1983 •
1984 •
2.6
2.6
86.3
86.3
132.5
117.5
15.0
RAMP
193.9
193.9
State Grant Request
• Estimated Approvable Request
OSM Grant Award

Projects


Dollars in Millions
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60
80
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180
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1980
1981
1982
1983 •
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2.4
10.1
9.9
51.9
10.1
1.3
13.7
10.3
57.6
24.5
12.3
96.4
45.0
3.6
167.5
18.0
3.0
State Grant (Construction)
RAMP
Federal Reclamation
• Estimate

Mr. **Harris**. I have a bar graph here which indicates to you the dollars in millions that have been appropriated to this fund. Prior to my coming to this office in 1981, there had been no appropriations from the State side of the AML fund. In 1982 we have an appropriation of $86.3 million which exactly equaled the amount requested by the State. In 1983 it is anticipated that we will approve grants in the amount of $132.5 million which is what the States have requested, and we have available that amount of funding.

We have requested in the 1984 budget for AML purposes $193.9 million. To give you some percentages, if you contrast with what has been done and what we project to do through 1984, you have an infinite increase in utilization of this fund because none had been utilized before.

If you count from 1981 up until 1984, you are talking about a nearly 2,000-percent increase in utilization of the fund. A lot of people say it's not being utilized fast enough. The statement that the Secretary and I both have made, is that we will request appropriations equal to what the States can utilize. We have said in many hearings before that if we run short in our requested appropriations. We will come back for a supplementary appropriation in order to be sure to meet the States needs in this area.

Senator **Warner**. You are suggesting the driving force has to come from the States?

Mr. **Harris**. That's right.

Senator **Warner**. If it's an unauthorized unappropriated balance due to the fact that the States didn't come in?

Mr. **Harris**. That's right, and I would anticipate with the funding that we have now, that there will be funds that will not be utilized by the States out of the appropriations that we have available unless they gear up faster than they are gearing up now.

We have done everything we can do in the offering assistance to the States from our technical centers and from our own management and budget personnel to assist them in the preparation of their grant request.

The OSM budget request for fiscal year 1984 is based upon estimates OSM solicited from the States, tempered only somewhat by each State's past performance.

It is projected that in fiscal year 1983, for the first time, expenditures from the State share of the AML trust fund will exceed the State share income to that fund. In other words, we will be reducing that balance on the state side of the fund in fiscal year 1983 for the first time. Projected increasing levels of appropriations in fiscal year 1984 and subsequent years should markedly draw down on the present balance in the State's side of the fund, which at the end of fiscal year 1982 stood at $359.6 million.

In fiscal year 1984, the States will receive $193.9 million, including $133.1 million in State share funds, and $60.8 million in Secretary's discretionary funds. The lack of the utilization of this fund up until this time has been a function of the fact that the States did not get their AML projects, or their AML programs approved. Only two had been approved when I came to this office. We have since approved 17 more, and the money is beginning to flow out at a pretty rapid rate.

Senator WARNER. What would you estimate to be the balance left with your 1984 projection of the $359 million now projected?

Mr. HARRIS. We would anticipate on the State side, at the end of fiscal year 1982 we would have $359.6 million. That would be the unappropriated balance at the end of fiscal year 1982. The unappropriated balance at the end of fiscal year 1983 would be $355.9 million, a small drop.

Senator WARNER. What about 1984?

Mr. HARRIS. In 1984 we would anticipate it would be down to $338.2 million.

Senator WARNER. There is still a considerable amount of money that would be unappropriated.

Senator FORD. Take into consideration that's just half.

Senator WARNER. We haven't touched the Secretary's discretionary portion. We will come to that.

Now, you say that relatively flat line in there, that $300 plus million, is due to the fact States aren't coming forward and filing their applications?

Mr. HARRIS. That's correct. Our whole appropriation or request was based upon what the States indicated to us that they could use during fiscal year 1983, and during fiscal year 1984. Both the Secretary and I have testified before hearings at the House and the Senate that if this amount of appropriation is not adequate to handle the projects, we will come back and ask for an additional appropriation.

There is another area which deserves comment. There has been much discussion of the fact that the fund is not interest-bearing. While we would not object to the fund earning interest, if Congress chooses to amend the act accordingly, I think many of those commenting on this subject lose sight of the fact that this is a Federal Government fund.

While section 402(g)(2) of SMCRA provides for State-share allocations, the money remains Federal money until appropriated by the Congress and obligated by the Office of Surface Mining. The logic of having the Federal Government borrow money to pay interest to itself is of benefit only when the money sits unused. It is the commitment of this administration to see that this money is spent as fast as the States can effectively use it. During the period that I have been in this office, we have taken major steps to assure that the States could obtain primacy and establish their AML programs and offered all the assistance OSM can provide to help them accelerate their programs. I think that the concern about interest is misdirected. The real question is what can be done by the States to build program capability so that the unappropriated balance can be drawn down and our AML problems eliminated.

Some of the States, which will be among the chief recipients from the fund are only 4 to 6 months into the program, and Wyoming, which will stand near the top, received its program approval this month. Thus, it can be anticipated that with time to continue to develop their programs, the level of grant requests by these states will increase rapidly.

I realize that the allure of $513 million of unappropriated State and Federal share funds now in the Treasury and the possibility of utilizing this fund to create a jobs program in these times of recession and high unemployment, especially in the coalfields, is very strong.

I would hasten to add, that as one of those charged with the responsibility for administering this program and as one who has worked to bring it around from a nearly nonfunctioning provision of the act to a point at which it has developed vitality and direction, I sincerely hope this committee and the Congress will not succumb to the temptation to redirect these funds from their intended use for whatever other use.

It has been proposed that many jobs could be created in the high unemployment areas of the coal-producing States by somehow utilizing unemployed miners in the program.

We, at the Office of Surface Mining and the Department of the Interior, are certainly not insensitive to the plight of the unemployed, especially in the coalfields, where alternative employment, even in the best of times, is almost nonexistent.

The Secretary has mentioned at many of the State program signing ceremonies that with the approval and implementation of that program, jobs would be created and moneys would begin to flow back to those areas from which coal is produced.

Our studies indicate that in OSM's AML projects, $1 million of expenditures directly generate 19 to 20 man-years of employment. As a check on our figures, we asked the Department of Agriculture to similarly study their experience with the rural abandoned mine lands program. They reported that in RAMP programs $1 million directly generated 18 man-years of employment. Now, there is secondary employment created by these primary jobs in this sort of program. You may see a broadening effect. I don't have any figures. I have heard 1.5 additional jobs are created as support positions for a primary job, but that's a figure I'm not sure of. I know that some additional employment, in addition to the figures that we have generated, would come about as a result of this program.

However, it becomes obvious that abandoned mine land reclamation projects are not very labor-intensive either at the priority 1 and 2 levels, as carried out by the OSM, or at the nonemergency level carried out by Agriculture in the RAMP program.

Our studies further show that few, if any, of the projects undertaken to date have been granted to companies or persons presently or previously involved in coal mining. Principally the successful bidders are earthmoving contractors. Thus, it would seem extremely difficult, if not impossible, to direct these expenditures, in any manner, to benefit unemployed coal miners.

The nationwide inventory of abandoned mine lands, which is now being completed, indicates that there exist verified priority 1 and priority 2 hazards, requiring reclamation expenditures about equal to the income of the fund over the projected life of the AML program.

The type of reclamation work that would be somewhat more labor-intensive should not be undertaken at the expense of leaving already identified priority 1 and 2 health and safety hazards unreclaimed.

The provisions of the act, with regard to priorities of projects, appear to me to be an obligation to the citizens, the States, and the mine operators, which Congress mandated with the passage of the act. Any deviation from that obligation should be weighed very seriously.

A few words about noncoal reclamation are in order. The act makes two points clear in section 409. The first is that all coal reclamation and coal development impacts must have been met before any noncoal projects are undertaken except those relating to public health and safety. The second is that the Secretary has the responsibility of independently determining whether the projects proposed by a State's Governor, or tribal chairman, endanger life and property, constitute a hazard to public health and safety, or degrade the environment. Some of our Western States have become upset about one or both of these points and asked that OSM change its policies. Unfortunately, it is not a policy matter but rather a matter of law.

Additionally, I would point out that the act already has sufficient latitude to allow States to develop more labor intensive projects. For instance, Kentucky has already set aside a certain percentage of funds for projects to be undertaken by small operators and Alabama has a provision which will allow the State to pursue environmental, high-labor intensive projects during the seasons when the high-priority, higher technological projects are not feasible.

We do not believe that the current situation calls for a redirection of the efforts of the AML program. Rather, we see it as a time for OSM to work with the States to develop their programs as quickly as possible and to assist them within the parameters of SMCRA to develop creative ways of putting more unemployed Americans to work, while meeting the priorities set forth by Congress.

In our dealings with the States on manning levels for their programs, one of their principal concerns has been that of predictable levels of funding for AML, since they do not want to be subjected to a gearing up and gearing down exercise. Any program I am aware of, that might be proposed or adopted for rapid expenditure of the accumulated AML funds, would subject the States to that which they have feared most.

Mr. Chairman, that concludes my prepared statement. I will be glad to attempt to answer any questions you might have. With your permission, I would like to have the Deputy Director of OSM, Mr. Steve Griles, my management and budget Assistant Director, Mr. Pete Culp, and the Assistant Director of Programs Operation Inspection, Mr. Bill Schmidt come up to the table. Some of these questions may be of such a nature that I will need their help to answer them.

Senator WARNER. I will adhere to a very strict time limit myself so that each of our colleagues here will have an opportunity to question you.

I want to commend you, Mr. Harris, and those of you who worked with you on your staff. I think you've done an incredible job. I think you've clarified today wherein some of the problems might rest between the Federal and State use of these funds.

The following questions are still of concern to me. Would you please explain for the committee the meaning of the word "priority" as used to describe projects that will be funded under the act?

Would you explain the different priority categories contained within the act?

Mr. **Harris**. Yes. The priorities go 1 through 6, and priorities 1 and 2 are life-threatening types of priority. I will get this directly from the act here.

> Priority 1 is for the protection of public health, safety, general welfare and property from extreme danger of adverse affects of coal mining practices.
>
> Priority 2, the protection of public health, safety and general welfare from adverse affects of coal mining practices.

Senator **Warner**. If you are going to read from the act, we can all put that in the record.

Mr. **Harris**. They are in diminishing order down to repair and replacement and reconstruction of public facilities. Generally what the Office of Surface Mining directly works with through Federal programs is priority 1 and priority 2. The States have generally addressed priority 1 and priority 2, but there has been some approval of priority 3 and priority 4 projects by OSM in the past.

Senator **Warner**. In your judgment, should the Congress address itself to any legislative language to the act?

Mr. **Harris**. There are some areas that I feel possibly should be addressed, one having to do with the tax treatment of land as a result of an AML project. In some cases the landowner is immediately liable for taxes on the increased value of his property. Liens are filed. It makes some landowners reluctant to have any AML project take place on their property.

There are some other minor housekeeping changes that I think would be helpful. The Secretary and I have said in the past we think the act is a good act, and we are not proposing any major changes. In fact, the Department will not propose any changes.

Senator **Warner**. Even the tax? The Secretary will not be forthcoming with respect to proposed amendment?

Mr. **Harris**. No. I may make some suggestions to those who are from the coal country about some changes that might be helpful in the administration of the act.

Senator **Warner**. In view of the fact that you project substantial surpluses in the State account in the coming years, would you propose any adjustment in the rate of tax. If this is a 15-year program, hopefully these moneys can be utilized? Nevertheless, it is recognized this is a burden to the extent on the miners, the mine companies.

Mr. **Harris**. I think that the present arrangement is very good. I think that Congress shows a great deal of intelligence in setting this up as a limited program. Our coal is burdened by this tax and, in turn, the tax affects our ability to compete in export, and even local markets.

I think it would be inadvisable to extend that tax. On the other hand, I think we have identified enough priority 1 and priority 2 projects to be addressed under this program that they will just about equal the number of funds that will be available through the 15-year levying of tax.

One of my concerns is that you begin to use a portion of these funds on lesser priority projects. Then at the end of this 15 years we are still going to have a number of priority 1 and priority 2 projects that have not been reclaimed. I think there would be a compulsion at that time to extend the tax, which I wouldn't like to see happen.

Senator **Warner**. What about the proposal that Congressman Rahall has put before the House?

Mr. **Harris**. I have not seen the text of Congressman Rahall's bill. I think it was just filed yesterday. I know some of the generalities of it. One of them would be the payment of interest on the fund to the States. I personally do not see that as a wise move, as I stated in my opening statement. It seems to me, until appropriated and granted to the States, these are Federal taxes raised by the Federal Government, and it would be less than advisable for the Federal Government to pay itself interest on funds that it holds. I see these as taxes paid by the utlimate beneficiary of the use of electricity, or whatever product may be made from the coal and not necessarily the property of the State. Mining did take place in those States, and that reclamation should be done there. This is something that is being contributed to by all the users of coal.

Senator **Warner**. Turning to another issue here, it has come to my attention that States like the Commonwealth of Virginia make a grant request for funding on priority 3 projects. They are told that the regulation promulgated from the act do not follow the funding priority of the three projects.

In your statement today you seem to say that in some instances States can fund priority 3 projects, and in others they cannot. Would you resolve this controvery?

Mr. **Harris**. Are we talking about the Wise County water project?

Senator **Warner**. That's correct.

Mr. **Harris**. We do not see that project as a priority 3. We've had quite a bit of communication with Virginia. Their first request of the Office of Surface Mining was that it be funded out of the Federal side of the funds. It has been the policy that the Office of Surface Mining address an emergency project out of the Federal side, and in a letter from me to Mr. Danny Brown I suggested that they submit it as a project to be funded out of the State side.

We see that as a priority 5 project rather than a priority 3, and I would not hold out a lot of hope that a water project would receive approval when we feel the priority may be a 5.

Senator **Warner**. I pass to Mr. Ford.

Senator **Ford**. Thank you, Mr. Chairman.

Dick, you have done a wonderful job and I'm proud of where we are today, but I have some real concerns. Let's get to the tax. Is my impression correct that the courts have upheld that the improvement of the land is not taxable?

Mr. **Harris**. In the IRS treatment of the RAMP program the Department of Agriculture was able to get a provision through Congress that released them—the landowners—from any tax liability. I think that's the only place. We have not done that. There hasn't been any court decision that I know of.

Senator **Ford**. It is my information—I may be wrong–the tax courts have ruled that it is not taxable. I wrote a letter to IRS asking them to go ahead with the regulation saying it's not taxable. That is a stumbling block to some of the improvements that you want to go forward with, because the landowner doesn't want to pay that money, and I can understand that. You are improving the land, but you are also improving the environment which helps a lot of other people. As you say, it's a national program, not a local program.

I might say, Mr. Chairman, that 5 of the 15 years are gone. One-third is behind us. I think we ought to look pretty hard at what happens in the next 10 years.

Dick, you said a few moments ago in your prepared statement that you had asked for all the moneys you thought the States would ask for. We gave you more money than you asked for in 1983. The moneys that you asked for, we increased that in the present appropriations. Can you use that?

Mr. **Harris**. We are going to attempt to. I can't give any guarantees. I would, at this point, just guess that we're going to have some funds returned. We are going to help every way we can to get that money spent out there.

Senator **Ford**. How much is in the 50 percent of the Federal side?

Mr. **Harris**. We had $153.7 million at the end of 1982. We anticipate $223.9 in the Federal side at the end of fiscal year 1983.

Senator **Ford**. You are not spending any Federal right now?

Mr. **Harris**. We are spending Federal moneys principally on emergency projects, and then in the fiscal year 1984 budget we are requesting $60 million from the Federal side be appropriated for the State programs because we think the States better recognize the priorities out there in the field than we can. The States suggested to us a long time ago when we were discussing delivery mechanisms that we funnel as much money through the State AML program as possible, so that we have one group setting priorities—that group being the one closest to the problem and the one that knows best how to work with it.

Senator **Ford**. You depleted the Federal side faster than the State side has been depleted. Give me just a quick two or three projects that you've funded out of the Federal side.

Mr. **Harris**. We have funded a lot of subsidence problems in various parts of the country out of the Federal side. Just recently in the State of Kentucky there was a church that was going into a hole as a result of subsidence and some residences not too far away. Those are the kinds of projects. We have quite a few in Pennsylvania.

Senator **Ford**. The Pennsylvania projects have been subsidence?

Mr. **Harris**. A good part of them.

Senator **Ford**. What are the other parts? Are you trying to repair damages from forest fires and things like that?

Mr. **Harris**. We have a mine fire in Centralia, Pa., that has been burning for over 20 years that we've never come up with a solution for. We have spent some funds there.

However, most of our expenditures for the fire was a result of an $850,000 additional appropriation by the Congress last year.

Senator **Ford**. I just wonder when we wrote this law, in our judgment, that we were out there trying to take care of forest fires. I don't think so.

You spend a lot more money in 5 years than you—well, not you, but the Department would allow the States and the problem of getting onboard I guess is one of them.

You say that you are going to put the Federal funding of projects through the State?

Mr. HARRIS. All except our rapid response emergency situations, and the States can do the emergency projects too if they develop the quick response procedures.

Senator FORD. On page 5 of your statement you say:

> One of the problems that impedes the program in a number of States is their cumbersome and time consuming contracting process, which if streamlined, could cut delay time to a fraction of what it is today.

Now this has been troublesome to me for some time. We get caught up sometimes in Federal bureaucratic direction. States, then, kind of follow through.

Has your agency made a review of State contracting procedures and made a recommendation to the States on how they could streamline their contracting ability?

Mr. HARRIS. We have in some cases. I am not putting you on the spot, but in the case of Kentucky it is my understanding that——

Senator FORD. Will you be amenable to some suggestions?

Mr. HARRIS. Sure. I understand that in the State of Kentucky—and this is not firsthand information, but what my staff has looked at—that three different sections of the Cabinet have to approve the bid letting before it can go out, and this is timing consuming process.

Senator FORD. That is correct. I don't know whether you alluded to this in the chairman's questioning or not, but in Congressman Rahall's proposal he says that State share shall be automatically transferred to the States with approved reclamation program rather than subject to annual appropriation by Congress. Do you have any feel about that?

Mr. HARRIS. I think since this is a national tax, I don't know whether Congressman Rahall's bill addresses itself to whether or not after that money is appropriated and passed on to the State, whether or not the Office of Surface Mining would retain any control over approval of those projects.

I think if that approval is completely delegated, that Congress is abdicating its authority and the authority of the Federal Government to see that funds that they raised are properly spent.

Senator FORD. You have indicated a great deal of support in the States and their integrity by accelerating the primacy, and I hope not any of the States have let you down in your good faith. I understand the need to have someone look over your shoulder. I think if you give the States these funds, you should, at some point, have the ability to blow the whistle. And you have your inspectors and people looking over their shoulder now. I just wondered if we could get recommendations from you, and I am going to give you some recommendations on expediting some of these contracts. You might be able to move much faster.

I am somewhat concerned that you are saying that at the end of 15 years that only priority 1 and priority 2, if I understood you right, would have been funded. That leaves 3, 4, 5, and 6 still out there unfunded.

It is my judgment from my State and others, that your priorities will cover a small land area, even though they may be technically hard to complete and expensive. But when you get beyond priority 2, you are getting into the land area of priority 3 which gives you large areas of orphan land, abandoned mine sites, et cetera, that will be left undone.

Now, we are sure cleaning up the environment, but we also have that vast land area of thousands of acres, as you know, that would probably be left undone.

Is my judgment correct in that?

Mr. HARRIS. There have been two studies done. One indicates it will take about all the funding to do priority 1 and 2. Another one indicates that there will be additional funds to work some of the other projects.

Now, in various States, whether or not they have had coal mining over a long period of time makes their utilization of this fund quite different. In your State, for instance, sir, you had mining for over 100 years.

Senator FORD. And we have a difference in the terrain also East and West.

Mr. HARRIS. And, as a result of that, you have a lot of orphan lands that need to be worked on. In the Western States where coal mining only recently commenced, they will have available to them a lot more money through the stateside of their program for lesser priorities because they don't have all these priority 1's and 2's.

Consequently, they will be getting into community impact funding and such as that. I rather doubt that in most of the Eastern States that have experienced mining over a long period, that they will ever get down to these impact projects.

Senator FORD. You see, that's my fear. We find, or at least I do, that it's either East of the Mississippi River, or West of the Mississippi River. West of the Mississippi River fairs much better than the East. We've been here longer and we've got more problems. We decide to do something about them. Surface mining in the West is out where you don't see it. The terrain is different. We turn around trying to work on something and get kicked around pretty good sometimes by trying to reclaim the land and make it environmentally sound. We find ourselves being shut out.

Now, I wonder, and I wonder out loud with you, that if it wouldn't behoove the Secretary to give some kind of judgment. I know he's from the West and there is a sagebrush rebellion, although I think that is beginning to simmer some. It isn't the flame that it use to be. But the distinguished Senators from Virginia, Kentucky, West Virginia and Pennsylvania and those States that have lived with this a long time, we are probably paying more into the fund now and only get half of it back.

I think Kentucky is still the leading coal producer. We are down 9 million in 1982 over 1981, but hopefully we'll get back. We still run 150 million tons, so we are putting in a pretty good pot, and we lose it to California. I say that lovingly. I don't have anything against California. I just wish I had some of the things they had and they had some of the things I had. We would both be better off maybe.

Do you follow what I'm thinking? Here's emergency funding for California, and I wonder how much coal is burned in California.

Mr. HARRIS. I don't know, sir, but this was a particularly bad situation. It was a public park and there had been one death of a child who fell into the hole as a result of subsidence, and it was a high priority emergency project.

Senator FORD. It was not a coal mine?

Mr. HARRIS. It had been, yes. There has been mining years ago in California.

Senator FORD. I thought it was all for gold.

Mr. HARRIS. I was born and raised in a town that sort of has a Chinese wall around it, and I share your concerns about the coal problems that we have in the East. However, I have to deal with the gentleman there on your left.

Senator FORD. But he's taking 30 percent of the tax and he is not surface mining very much. He hasn't been doing it for a long time. I have kin folks who live in his State. I know as much about his State as he does sometimes.

Mr. HARRIS. I do share your concern that the Eastern States are going to utilize most of their funds in their emergency projects, whereas in many of the other States it will be for uses remotely associated with coal. I didn't write the act.

Senator FORD. I submitted 77 amendments to the act and had most of them taken care of, but I never could squeeze out the little bit of difference between East and West of the Mississippi. And where we are paying most of it or a large part of it, we find other places that are now paying very little. California is not paying anything.

Mr. HARRIS. I think this does balance itself out to a degree due to the fact that most of our emergency projects are in the areas that have had a long history of coal mining. As a result of that, the discretionary side of the fund moves more to the heavily mined areas.

Senator FORD. I wish you would give some consideration—I don't think it should be statutory. Maybe it should be to take you off the spot, but Pennsylvania and its mining operations, they don't surface mine coal over 30 degrees. They were basically excluded from the steep-slope surface mining legislation where other States that have tremendous problems producing coal have increased their costs and problems, and you still tax them, you are still able to produce, but we don't get any help back. It is somewhat discouraging to those of us who have to represent that constitutency, particularly Appalachia.

Senator WALLOP. Mr. Hecht?

Senator HECHT. I don't have any questions.

Senator MELCHER. Mr. Harris, when we first started talking about surface mining legislation in the Congress in the early 1970's, the term orphan lands confused me. I finally learned, over the course of the years, a lot about orphan lands that I never knew before in the East. The title that you refer to, title IV, was to create a fund to take care of the orphan lands. When the House discussed what the question of the fees would be, it became obvious that we wanted to make sure that in the collection of these fees, the impacts of mining as occurring right now would be mitigated.

It was my amendment which was supported and cosponsored by the then Congressman from Wyoming that set up that half of the money to be reserved for those States and Indian tribes where coal mining was ongoing—So it is a separate portion of the fund.

In your statement you refer, to title IV which provides for the reparation of the orphan lands, otherwise known as the abandoned lands. Of course, title IV has two purposes. The first part is reserved for any reclamation that might be necessary in a State with lands already mined. The second part of title IV provides money for public facilities and communities impacted by coal development. That's only beginning to be seen in our State. We had quite a time making sure that it was seen, and we also are aware there are some opportunites for correction of problems that are not connected with coal as provided for under section 409 of 5 MCRA. Montana has been mining coal for almost 100 years. When those trains came through and they needed coal, they got it in Montana. We've had a long history of mining coal in our State. We have a long history of mining a lot of other minerals, too, in our State; as I have mentioned, provisions in this title provide for the opportunity for similar repair of noncoal lands.

I have a number of points concerning your testimony. First, it's rather unusual that the abondoned mine reclamation fund, which is established explicitly as a trust fund, and under title IV, section 402, of the act, does not accrue the interest derived from that trust fund. You have suggested that if we want our fund to gather interest, we must mandate this by law. Certainly the interest on social security payments accrues to the social security trust fund. I would assume that in the case of the highway trust fund, the interest derived from taxes likewise accrues to the highway trust fund.

If it is absolutely essential to make the point that the interest which accrues, from collected reclamation fees, should go in to the trust fund, then I suspect this committee will try to make sure that that happens.

Mr. **Harris**. I think that is a decision for the Congress to make. That can't be a discretionary decision with Treasury. Congress didn't see fit to write that into the act, and I think that's where the difference comes.

Senator **Melcher**. That's a good point. Perhaps we should pioneer the lead in the Senate. Hopefully the Interior Committee in the House is pioneering to make sure it is included. Again, I think it is very unusual to hear about a trust fund where the interest does not accrue to that trust fund.

On these charts you have displayed, you show that if the States apply for the money that accrues to their benefit, they are going to get it. It doesn't seem to be the case in Montana. The State grant request in Montana was a modest $8.6 million, and the amount budgeted for this fiscal year 1983 by OSM is $4.7 million which is a little more than half of the State's request. For this coming fiscal year 1984, the State again has grant requests of $8.5 million, and the projected budget estimate for fiscal 1984 is $5.8 million. Could you explain the discrepancy between OSM's budget proposals and the corresponding State grant requests?

Mr. HARRIS. As I said in my opening statement, sir, we had taken the request of the States and they were tempered somewhat by a States past performance. Wyoming, only the 15th of this month, got its title IV program approved. I think this reflects the fact that the budget people are questioning as to whether or not they will be able to utilize the funds that they request. If they can, then, as I have stated ~~here~~ and as the Secretary has stated, we will come back and ask for additional funds to meet their requirements.

Senator MELCHER. There is some-labor intensive work connected with these grants. It is pretty labor-intensive for the State to make the grant request but that,of course, is mostly paper work. I realize you would like to cut down on the amount of paperwork there is.

Mr. HARRIS. We have made a concerted effort and been successful, I think, in cutting down the amount of paper that has to be submitted in order for the State to have a grant approved. We have eliminated a lot of the requirements of information that probably would never be used again and attempted to get that paperwork load reduced.

Senator MELCHER. I am going to give you an example in Montana. For 2 years they have been making a grant application for Silver Bow Creek and it has been turned down. That has been labor-intensive.

Mr. HARRIS. Could I take a moment to address that? There are five areas in Montana in which there are tailings, as we understand it, left from previous mining projects. First of all, we have not turned down the project. The projects were initially deferred due to the lack of corroborating documentation specifically delineating the threat to the public and the public safety. We have repeatedly asked the State to submit additional data, or to request administrative funds to collect the data. We have offered funding for them to collect the necessary data to substantiate that information. We do not have, and our field people have even looked into the files of the regulatory authority in Montana to attempt to gain that corroborating information. We have not gotten it, but we have asked the State to submit that information and they have not submitted it. We have offered them funding to generate the grant request with and they haven't done that.

Senator MELCHER. There's seems to be a lack of coordination between the State level and the Federal level. We should try to improve this situation.

Mr. HARRIS. We would certainly like to. I don't know what we could do beyond having asked the State to submit the necessary evidence, offering them funding to do whatever studies are necessary.

Senator MELCHER. I would like to refer back to the Silver Bow Creek trailing site. Silver Bow Creek is rated 24th nationwide on the Environmental Protection Agency's Superfund list.

You can imagine the threat to public health that the Silver Bow Creek site poses. I am suggesting that in process of the shuffling around there hasn't been an adequate review by the Office of Surface Mining of this particular project. This is of course, just one case. If OSM receives a report from the agency's is state-level personnel which indicates that the situation does not pose a serious threat to public health, then there's something wrong with your staff from Denver. If, on the other hand, the people at Denver are right and have submitted a correct report, then there's something wrong at a different level; perhaps there is some miscommunication below the administrative, level here in Washington. How can a site be rated 24th in the Nation on the Superfund list and not be viewed correspondingly as a significant threat to public health and safety by the Office of Surface Mining, The Silver Bow Creek project hasn't been approved; in fact, it's been turned down for State grant money by OSM.

Mr. HARRIS. Your recent letter to me was the first indication that I had that this was even placed on the Superfund list. The State had not indicated that to us.

Second, I have requested——

Senator MELCHER. What I'm suggesting is that the fact of Silver Bow Creek's status on the Superfund list was obviously known, and not just at the State level, but also by whoever looked at it from the Office of Surface Mining in Denver and the regional office, this should have been communicated directly to you.

Mr. HARRIS. There are two things. First, I have requested that I talk to your people personally tomorrow in an attempt to cut through what you would normally term redtape. Secondly, I will not take the responsibility for this not having moved because the State of Montana has not responded at all to numerous requests for information and for help to us. I can't go out as a Federal official and go into the State and grant funds unless I get from that State the information necessary to back up that appropriation. You've got other committees around here that are very tough on our agency. On what basis did you appropriate this? Well, if I have a letter from a Governor with no supporting information and I make a grant and I go over to the appropriations subcommittee, over they're going to be much tougher on me than being here today on the redtape problem. I have to have cooperation from that State and I have not received it.

Senator MELCHER. The State of Montana is represented here today and I think they are prepared to give you the cooperation necessary to clear up there matters. I raise this point from two perspectives: First is from the view of the State of Montana, who thinks they've gone to a lot of trouble to apply for State grant money which they haven't received.

Second, I look at it from the Federal standpoint. I don't need a breakdown of how the grant applications flow to the Federal level because I'm sure that when they reach your level the proper information has been developed by your people in cooperation with the States who are going to act on it. Now let's make sure this cooperation is ongoing because I want this program to work.

Mr. HARRIS. There's another question that comes into my mind. This is listed 24th to 28th on the EPA's list for their Superfund project. There is a legal guestion that our solicitors are looking into now. This is not a Federal Government situation where we're trying to shove it off on somebody else, but if this is listed 28 on the Superfund list, then we're not at all sure That it isn't a job which should be accomplished by Superfund rather than the Office of Surface Mining. Our studies indicate, and I think the studies of your water quality people indicate, that if we were to remove the tailings, on this Colorado tailing site, that we're eliminating only two-thirds of the hazard. One-third of it will still remain because there has been dumping and all sorts of other things for about 100 years in this creek.

Now I again have to determine whether or not we are in a position to grant funds to only partially clean up a project.

Senator **Melcher**. Obviously the provisions of the law are applicable; the delay by Federal agencies, no matter who is going to pay what share of it, doesn't correct anything. What is absolutely essential is that, by law, the money was gathered, and is in the trust fund. It should be allocated to the States. There need not be any delay simply because there are two different agencies. After all, whenever public health, is jeopardized by a particular situation we want to correct it. We often say we're going to correct it as fast as we get the money. Here's a case where we have the money from both sources and there should simply not be any delay between solicitors wondering who is going to pay how much.

Mr. **Harris**. There's are lot of questions that the State leaves unanswered that we need answers to before we can move on it. One of them is whether or not there was dumping post-1977. If so, it does not qualify under the act. If that's the case it does not qualify for title IV. This is information we have been unable to get.

Senator **Melcher**. I think the public health hazards override all of that, and obviously most of the tailings were there prior to 1977.

Mr. **Harris**. The Congress wrote the act, I didn't. And that's what it says.

If there has been something contributed to this in the way of dumping, tailings after 1977, it doesn't qualify. That's very explicit in the act.

Senator **Warner**. Mr. Harris, although we have further questions of you, I think in fairness to our State colleagues that we now have a panel comprised of various State representatives today.

Senator **Melcher**. There's one point I think we ought to make clear on the record. The act establishes clearly that whatever occurred prior to 1977 is eligible for trust fund money regardless of whether tailings or other damages were added to a site after that date I wouldn't want our hearing record to incorrectly indicate otherwise.

Mr. **Harris**. As I mentioned before, they may be eligible for Superfund moneys. They have $1½ billion over there. There must be a legal interpretation so far as responsibility is concerned if dumping took place after 1977. My reading of the act is if it was continued then it does not qualify for title IV funds.

Mr. Chairman, I will be happy to remain here and available.

Senator **Warner**. If you could remain so you could have the benefit of the views of the State. I caucused with them in the hall and they are prepared to provide some rebuttal testimony.

We will adjourn promptly at 12 o'clock and resume again at 1:45. The panel will consist of Mr. Brown of Virginia, Mr. Bowling of Kentucky, Mr. Jutenen from Montana, Mr. Gallagher from Montana, and Mr. Rosenbaum from Kentucky.

[Subsequent to the hearing the following questions and answers were submitted for the record:]

Energy Committee

March 1, 1983

Mr. James R. Harris
Director, Office of Surface Mining
  and Reclamation Enforcement
Department of the Interior
Washington, D.C. 20240

Dear Mr. Harris:

Attached are some questions concerning the Office of Surface Mining's oversight of the abandoned mined lands program under the Surface Mining and Reclamation Act of 1977 (SMCRA):

1) What is the Department's rationale for requesting no additional funding for the Small Operators Assistance Program (SOAP) in FY 1984?

2) How has OSM arrived at its estimate that unobligated funds from previous fiscal years will be sufficient to meet program needs of SOAP in FY 84?

3) Would you briefly describe the process by which a state demonstrates its need for small operator assistance funds?

4) What is the current status of the National Inventory of Abandoned Mine Lands?

5) Does OSM plan a further review of the Inventory?

6) It is my understanding that OSM contracted with consultants to do the National Inventory of Abandoned Mine Lands.

- What consultants did OSM use?

- Please describe for me the working relationship between your consultants, and the various state regulatory agencies involved in completing the National Inventory?

7) Why is OSM proposing a $5.1 million cut in its Federal share of AML funds, including RAMP?

- How does OSM plan to respond to potential abandoned mine land emergencies in light of the agency's proposed budget cuts for the Federal discretionary share?

8) During the February 17 AML hearing before the House Committee on Interior and Insular Affaris, Governor Herschler of Wyoming proposed the use of state abandoned mine land funds for the establishment of a subsidence insurance fund. According to Governor Herschler, the fund would be used to repair subsidence impacts after occurence, and "...would cover both the damages to public and private interests resulting from subsidence as well as...corection of subsidence occurences."

- Does OSM feel that the use of state reclamation funds for the purpose of insurance is permissible under Title IV of SMCRA?

- If not, does OSM feel that such use of grant money is warranted and would be a good idea? Does OSM regard this use of money as a proposal which would have to be legislatively authorized, or could it be mandated by regulation?

Your cooperation in responding to my questions as expeditiously as possible is appreciated.

With kindest regards,

J. Bennett Johnston, U.S.S.

JBJ:lmf

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAR 29 1983

Honorable J. Bennett Johnston
United States Senate
Washington, D.C. 20510

Dear Senator Johnston:

Thank you for your letter of March 1, 1983, concerning the Office of Surface Mining's (OSM) oversight of the Abandoned Mine Land Program.

The Department did not request any additional funding for the Small Operator's Assistance Program (SOAP) in Fiscal Year 1984 because unobligated funds are sufficient to provide services to all small operators expected to apply during Fiscal Years 1983 and 1984. OSM arrived at its decision through the following analysis. In Fiscal Years 1980, 1981, and 1982 a total of 850 small operators have been provided SOAP assistance through State administered and federally administered programs. Cumulative obligations in contracts with qualified laboratories amounted to about $21.3 million. Thus, at the end of Fiscal Year 1982, there was a balance of approximately $33.4 million in unobligated monies from previous years' appropriations for the SOAP.

About 600 small operators are expected to receive assistance in each of Fiscal Years 1983 and 1984. Assuming the unit cost per contract for services remains at $25,000, then $15.0 million will be obligated in each Fiscal Year. Cumulative obligations through Fiscal Year 1984 will total $51.3 million, leaving an unobligated balance of about $3.0 million at the end of the Fiscal Year.

A State demonstrates its need for small operator assistance funds through a grant application to OSM. The requested funds in the grant application from a particular State reflect a projection of activity anticipated during the performance period of the grant. This projection is based primarily on historical costs and numbers of operators who have been provided SOAP assistance through earlier grants. Lacking any historical data, such as in submitting its first grant application, a State will base its needs on estimated costs for providing the SOAP technical services and the potential number of small operators derived from permitting data and coal production data available through State records.

The Abandoned Mine Land Reclamation (AMLR) Inventory initial data collection is complete, the data processed, and a final report is being completed.

The AMLR Inventory is dynamic rather than static, and, as such, must be constantly revised to reflect the extent of AML problems needing reclamation. New problem areas will surface and existing ones will change in nature and extent as reclamation occurs or as natural conditions change. OSM is currently developing a permanent update process which will accept new and revised data.

Due to the size of the AMLR Inventory effort, OSM decided in 1979 to use the Oak Ridge National Laboratory (ORNL) and the Tennessee Valley Authority (TVA) to design, develop and implement an inventory of AMLR problems affecting the people.

Most of the data was collected by each State using its own staff, State University or consultants. The collected data was then reviewed, validated and processed by the inventory team which consisted of ORNL and TVA personnel. Some States chose not to participate in collecting the necessary data because there was either no active mining or they had inadequate staff resources. In this case, OSM used consultants to collect the data. All of the data was reviewed and processed by ORNL/TVA in the same manner and the results were coordinated with the States.

The decrease in the funding for Federal Reclamation Projects is primarily due to the increased State assumption of emergency functions, and deletion of a portion of the funds added by Congress in Fiscal Year 1983 ($5.6 million) for emergency and high priority projects. This is consistent with OSM's policy to rely on the States as the primary delivery mechanism for project activities, as reflected in the proposed $61.4 million increase for State Reclamation Grants.

The RAMP sub-activity request of $3,082,000 in Fiscal Year 1984 is $568,000 less than the Fiscal Year 1983 appropriated amount. Funding to the Soil Conservation Service is being phased out as States assume direct responsibility for project planning and execution. Funding for new RAMP-type projects may be requested by States in their State Reclamation Grants.

On September 29, 1982, the States and Tribes were given the opportunity to amend their Reclamation Plans to assume responsibility for emergency reclamation projects under the grant program. The proposed budget assumes that Fiscal Year 1984 funds proposed for the Federal Reclamation Program are adequate. If fewer States than anticipated undertake an emergency program, OSM will submit a supplemental request at a later date.

Section 401(c) of the Act lists the purposes of the AMLR Fund. Subsidence insurance is not one of the purposes. OSM has requested that its Solicitors determine whether payment for insurance is an appropriate or authorized use of AMLR Fund monies, and whether such use of the Fund would be consistent with Section 407(h) of the Act. That Section prohibits the Fund from being used to pay for the construction costs of housing. While OSM has not seen a proposal from Wyoming for a subsidence insurance program, it is aware of States which do have such a program (Pennsylvania, Illinois and, recently, West Virginia). In those States, no AMLR funds are involved.

Thank you for your interest in the Abandoned Mine Land Reclamation Program. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Director

Senator **Warner**. We'll lead off giving each of the witnesses 5 minutes here for their comments, and we'll lead off with Mr. Brown.

STATEMENT OF DANNY R. BROWN, COMMISSIONER, VIRGINIA DIVISION OF MINED LAND RECLAMATION, DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT, BIG STONE GAP, VA., ACCOMPANIED BY FRED WALKER

Mr. **Brown**. Thank you, Mr. Chairman.

Senator **Warner**. I just want to set the frame of the five State positions here and then we'll get into greater depth.

Mr. **Brown**. Before we begin I'd like to introduce Mr. Fred Walker who is behind me.

Senator **Warner**. Mr. Walker is well known to the chairman and members of the committee. He's been in this business for a long time.

Mr. **Brown**. Mr. Chairman and members of the committee, my name is Danny R. Brown. I am here today at the request of Governor Robb, of the Commonwealth of Virginia, and I appreciate this opportunity to come before you to suggest some steps that will make the abandoned mined land reclamation program more effective.

Virginia is deeply concerned and disturbed with the inconsistencies and the slowness with which all funds collected by the Office of Surface Mining under the abandoned mine land reclamation fund are disbursed to States.

First, with regard to inconsistent funding, as you know there are several ways in which the AML reclamation funds are disbursed. The States are to receive 50 percent of the moneys collected. The Department of the Interior is to retain the other 50 percent of the moneys collected. Of Interior's 50-percent share, up to 20 percent is to be used to fund the rural abandoned mine program, up to another 20 percent is to be used to fund the small operators assistance program, and the remaining 10 percent comprises the Secretary of the Interior's AML discretionary fund.

We have several problems with the way in which Virginia's 50 percent share of abandoned mine land reclamation funds are returned to the State.

First, we feel that the system should be revised to give each State reponsibility for approving its own grant proposals, without long, costly reviews by OSM.

Currently, from the time we start a project grant until the time that actual work takes place on the ground, no fewer than 435 days are involved.

Also, under the current system, each State has to invest administrative costs in each application which are not recoverable unless the project is approved.

We feel that our share of this tax should be returned regularly, on a quarterly basis, .and placed under our control. This would enable Virginia to know at the beginning of each year the amount of moneys available; predetermine the number of projects that could be scheduled for reclamation, and eliminate the present uncertainty over project approval.

Virginia would, of course, continue to comply with OSM's oversight procedures to insure proper expenditures of the funds received.

Even with the delays in project approvals involved in OSM reviews, Virginia has done quite well with this program. Since 1978, $32 million has been collected in Virginia under the AML reclamation fund. The Commonwealth's 50 percent share of this is $16 million. We have actually expended $7.5 million. In addition, we have 17 projects pending in the 1983 construction grant totaling $4.3 million. We therefore, have expended or applied for almost $12 million or approximately 70 percent of all moneys we were to receive from Virginia's share.

In regard to the Department of the Interior's 50-percent share. As stated earlier, RAMP and SOAP are funded from Interior's share of the moneys collected. The residual moneys left after funding RAMP and SOAP are to be used by the Secretary to fund special reclamation projects at his discretion.

Senator WARNER. I'm going to have to interrupt you. Your 5 minutes has expired. Your whole statement will go in. You'll be given another opportunity at 1:45 to address other points, but in fairness to each of the five States here, I want to give them an opportunity to address this issue.

I judge that you disagreed with the representation of the Federal Government and Mr. Harris that the burden is on the States, and these appropriated funds are largely accumulated in the Federal Government as a result of lack of shall we say timely application on behalf of the State.

Is that correct?

Mr. BROWN. Yes, that is correct.

[The prepared statement of Mr. Brown follows:]

THE TESTIMONY OF DANNY R. BROWN FOR THE COMMONWEALTH OF VIRGINIA BEFORE THE ENERGY AND MINERAL RESOURCES SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND MINERAL RESOURCES, U.S. SENATE

FEBRUARY 24, 1983

Mr. Chairman, Members of the Committee, my name is Danny R. Brown, I am Commissioner of the VA Division of Mined Land Reclamation, Department of Conservation and Economic Development. I am here today at the request of Governor Robb, of the Commonwealth of Virginia, and I appreciate this opportunity to come before you to suggest some steps that will make the Abandoned Mined Land Reclamation Program more effective.

Virginia is deeply concerned and disturbed with the inconsistencies and the slowness with which all funds collected by the Office of Surface Mining (OSM) under the Abandoned Mine Land (AML) Reclamation Fund are disbursed to states.

I. First, with regard to inconsistent funding, as you know there are several ways in which the AML Reclamation Funds are disbursed.

- The States are to receive 50% of the monies collected.
- The Department of the Interior is to retain the other 50% of the monies collected. Of Interior's 50% share, up to 20% is to be used to fund the Rural Abandoned Mine Program (RAMP), up to another 20% is to be used to fund the Small Operators Assistance Program (SOAP), and the remaining 10%

comprises the Secretary of the Interior's AML Discretionary Fund.

The States 50% Share

We have several problems with the way in which Virginia's 50% share of Abandoned Mine Land Reclamation Funds are returned to the state.

First, we feel that the system should be revised to give each state responsibility for approving its own grant proposals, without long, costly reviews by OSM.

Currently, from the time we start a project grant until the time that actual work takes place on the ground, no fewer than 435 days are involved.

Also, under the current system, each state has to invest administrative costs in each application which are not recoverable unless the project is approved.

We feel that our share of this tax should be returned regularly, on a quarterly basis, and placed under our control. This would enable Virginia to know at the beginning of each year the amount of monies available; predetermine the number of projects that could be scheduled for reclamation, and eliminate the present uncertainty over project approval.

Virginia would, of course, continue to comply with OSM's oversight procedures to ensure proper expenditures of the funds received.

Even with the delays in project approvals involved in OSM reviews, Virginia has done quite well with this program. Since 1978, $32 million has been collected in Virginia under the AML Reclamation Fund. The Commonwealth's 50% share of this is $16 million. We have actually expended $7.5 million. In addition, we have 17 projects pending in the 1983 Construction Grant totaling $4.3 million. We therefore have expended or applied for almost $12 million or approximately 70% of all monies we were to receive from Virginia's share.

The Department of Interior's 50% Share

As stated earlier, RAMP and SOAP are funded from Interior's share of the monies collected. The residual monies left after funding RAMP and SOAP are to be used by the Secretary to fund special reclamation projects at his discretion.

There is never any consistency about the percent that will be used to fund state RAMP and SOAP projects nor about the distribution frequency.

Here, we are concerned that Virginia has not been able to anticipate the percentage of Interior's funds - i.e. the percentage of Interior's $16 million share of Virginia's AML funds - that will be spent in Virginia for RAMP or SOAP projects.

If, for example, up to 20% of Interior's $16 million could be spent for RAMP, as much as $6.4 million of grants could have come to Virginia for RAMP projects. If Virginia had known that those funds would be available it could have selected appropriate projects and expended funds to do the costly engineering studies necessary to get OSM approval of the projects. Without such certainty however, funds could not be spent for the engineering - the engineering could not be done - and OSM project approval could not have been achieved.

The impact in Virginia has been to limit us to one $100,000 grant rather than the $6.4 million to which we feel entitled.

Again, we'd like to see a specific percent of the funds that are collected designated for RAMP and SOAP, and those funds appropriated back to the states on a quarterly basis. Thus the states could anticipate from the AML funds collected how much money would be available and specific projects selected that could be accomplished with those amounts.

II. Aside from the problems of inconsistency, we are also concerned with slowness. We said before that a portion of the 50% of Interior's funds remain after distribution to RAMP and SOAP.

Interior has collected a total of approximately $1.2 billion, as its share, since the program started in 1978. The fund now stands somewhere in excess of $700 million. Thus only $500 million has been distributed. These are funds that would not only be valuable in terms of the potential useful projects that could be carried out in our coal fields but could also provide jobs.

In normal times we would find these funding and appropriation delays inconvenient but in todays economic climate with unemployment in the coal fields at several times the National and State averages it becomes even more important to hasten and expand expenditure of these earmarked funds. In my own State of Virginia in the the six (6) most heavily mined counties we have 24.9% of the labor force unemployed compared to statewide unemployment of 8.4%. Perhaps more compelling are the actual number of people represented by the statistics. For Virginia this means approximately 22,000 households are without the normal income supplied by the main provider for the family. This is an area where outside employment is less available to the spouse of the main providers than in areas with more diverse economic opportunities.

To obtain some relief to our citizens suffering through these very trying times a quicker flow of Interior's discretionary funds is needed.

In Virginia there are three specific projects of which I am aware that could be of great benefit to the citizen's of our coal fields.

They are:

1. The Wise County Regional Water System. This is an $11 million project involving the Lenowisco Planning District, Wise County, Virginia and the towns of Coeburn, Wise and Norton. The localities have put $300,000 of their own money into the preplanning of this project and have attracted

nearly $3 million from other federal sources (Appalachian Regional Commission, HUD and Farmers Home Administration).

Virginia submitted a proposal to OSM to partially fund this project. We were refused. The refusal was based upon the project not meeting OSM regulations for a Priority 1 rating. OSM classified this project as Priority 5.

A Priority 1 rating covers the protection of public health, safety, general welfare, and property from extreme danger resulting from the adverse effects of past coal mining practices.

A Priority 5 rating covers the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining activity.

We think that as low as this project should be prioritized is Priority 2 which covers the protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.

The project, as proposed, would restore a drinkable water supply to an area that has seen its water supplies degraded from abandoned mines. This project alone could be used to offset some of the high unemployment in the coal fields, provide a safe water supply for Virginia citizens and possibly allow for the development of other industry in the area.

2. Powell River Demonstration Project. This is a research and development project deserving special funding attention. Penn Virginia Resources Corporation has initiated the Powell River Project in Wise County, Virginia. Penn Virginia has invested over $500,000.00 in reclaiming this abandoned mine land to economically valuable post mining land uses such as forestry, agriculture crops, horticulture, and cattle grazing.

OSM recently gave the Project $50,000 to continue a soils research project aimed at making better soils through the mining process than exist naturally on our Virginia mountainsides.

It is obvious that additional funding is necessary to develop such project to find economically viable post mining land uses and industries. We feel strongly that such research is vital to the coal fields.

3. Geohydrological Study of Virginia's Coal Fields. This project was designed to provide a base line study of existing groundwater supplies at a cost of $1,191,993.00. This base line study was proposed in January 1982 as a SOAP research project. It was refused in December 1982 basically because it was felt that it would assist more than just Small Operators. It would, in fact, serve more than the small operators; however the small operators could not get the information elsewhere.

It would generate water quality and quantity data and a water data retrieval system for both the SOAP and AML programs. This system, if developed, would have provided the needed information required for effective decision making in regard to probable hydrologic consequence determinations on SOAP applications as well as setting reclamation priorities on AML sites. In addition, this same data would be available to the counties, towns and planning districts for regional planning purposes.

Summary

In closing, let me re-emphasize Virginia's concern over funding inconsistencies and delays in the AML Reclamation Fund monies being put to use.

Virginia specifically recommends that:

- the states receive their 50% share of the AML monies on a quarterly basis and be given control over the approval of their own projects.
- the RAMP and SOAP monies should be funded at a specific percent and the monies returned to the states on a quarterly basis.
- Interior's discretionary funds should be put to work for the benefit of the nation's coal fields as quickly as possible.

Thank you for your attention.

Senator WARNER. We'll now hear from Mr. Bowling.

STATEMENT OF KENES C. BOWLING, EXECUTIVE DIRECTOR, INTERSTATE MINING COMPACT COMMISSION, LEXINGTON, KY.

Mr. BOWLING. My name is Kenes C. Bowling. I am executive director of the Interstate Mining Compact Commission. We are comprised of 17 States for which the Governors of those States make up our commission. And on behalf of IMCC we would like to express our appreciation to the chairman and the members of the committee for the opportunity to come before you today and express our views on the abandoned mine land program.

I'm going to skip a lot and try to summarize as best I can, Senator.

We believe taht prompt congressional approval will accomplish the following priorities and have an immediate favorable impact on the States reclamation programs.

Our top priority is to establish a continuing appropriation from Congress so that money may be made available to States as needed. However, we understand that depending on when the appropriation is approved, it could be 1 to 2 years before it would be integrated into the system and become effective.

As a stopgap to improve our immediate problem, we would urge the committee to insure that there is room in the budget resolution to accomodate an appropriation of $700 million; 50 percent of this appropriation would result in a $350 million State trust fund and still leave $300 million or so in the fund. If States aren't able to expend the full amount the appropriations should be carried over until expended.

Subsequent appropriations should be those amounts collected each year.

Our second priority is the removal of AML trust funds from the budget process. We would like to see AML trust funds taken out of the budget process so that it will not reflect one way or the other on the national deficit.

Our third priority is to request that Congress mandate a large portion of the Secretary's discretionary fund be allocated to the States.

Our fourth priority is for Congress to encourage the cost-effective utilization of reclamation funds for priority one, two, and three projects as designated by the States.

Our fifth priority is to request that Congress mandate funds for the RAMP program be granted to the State, and allocated in the same manner as the state allocation provided in section 402(g)(2).

Since the State government has the responsibility to set priorities for all reclamation projects, this recommendation would facilitate an orderly ranking of projects and would assure coordination between State reclamation agencies and Department of Agriculture. We think it should be the State's perogative to utilize the assistance of the U.S. Department of Agriculture, or to implement the projects through normal State programs.

Our sixth and last priority is that Congress should mandate the Federal Government to pay the prevailing Treasury rate on a quarterly basis on the abandoned mine lands funds and the interest collected thereon should be returned to the States.

The amount collected at interest would essentially cover the administration of the trust fund and allow all money originally collected from the coal operators to be returned to the States that carry out on the ground reclamation.

We wish again to express our appreciation to this committee.

Thank you.

[The prepared statement of Mr. Bowling follows:]

Interstate Mining Compact
1364 Devenport Drive
Lexington, Kentucky 40504
Kenes C. Bowling, Executive Director
Phone: 606/253-1578

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STATEMENT BY KENES C. BOWLING, EXECUTIVE DIRECTOR

INTERSTATE MINING COMPACT COMMISSION

BEFORE THE

ENERGY AND MINERAL RESOURCES SUB-COMMITTEE

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE

FEBRUARY 24, 1983

Mr. Chairman, members of the Committee, my name is Kenes Bowling. I am the Executive Director of the Interstate Mining Compact Commission. Our Commission is composed of the Governors of Alabama, Illinois, Virginia, Texas, Tennessee, Indiana, Kentucky, North Carolina, Pennsylvania, Maryland, Ohio, Oklahoma, South Carolina, West Virginia, Arkansas, Louisiana, and New Mexico. These seventeen states represent approximately eighty-five percent of the coal mined in the United States. All our coal producing states have achieved primacy under PL 95-87. On behalf of the IMCC, we wish to express our appreciation to the Chairman and members of this Committee for the opportunity to come before you today to express our views on the Abandoned Mine Land Program.

I am sure you all agree that any program which has as its aim and purpose the improvement of living conditions in areas as environmentally degraded as the coal fields is worthwhile. Unfortunately, up to this time it has been and continues to be very difficult to move projects through the system to the point where funds can be expended for their principal purpose which is to carry out "on the ground" reclamation. Far too much time and effort is required before a proposed project reaches the construction phase. Our states, having several years experience with the Office of Surface Mining, and particularly the Abandoned Mine Land Program, believe we can offer constructive recommendations to alleviate restraints in the Program.

We believe that prompt congressional approval to accomplish the following priorities will have an immediate favorable impact upon the states' reclamation programs.

Our top priority is to establish a continuing appropriation from Congress so that monies may be made available to states as needed. The current system requires states to estimate months in advance the amount of money to be included in an OSM annual budget request. Most of us have learned the hard way that hindsight is more reliable than foresight. A continuing appropriation

WOULD NOT, IN OUR OPINION, LESSEN CONGRESSIONAL CONTROL OVER EXPENDITURES IN ANY WAY SINCE NO CHANGE IS PROPOSED IN THE EXISTING CRITERIA FOR SPENDING THE MONEY. HOWEVER, WE UNDERSTAND THAT DEPENDING ON WHEN THE APPROPRIATION IS APPROVED, IT COULD BE ONE TO TWO YEARS BEFORE IT WOULD BE INTEGRATED INTO THE SYSTEM AND BECOME EFFECTIVE. AS A STOPGAP, TO IMPROVE OUR IMMEDIATE PROBLEM, WE WOULD URGE THE COMMITTEE TO INSURE THAT THERE IS ROOM IN THE BUDGET RESOLUTION TO ACCOMMODATE AN APPROPRIATION OF $700 MILLION, FIFTY PERCENT (50%) OF THIS APPROPRIATION WOULD RESULT IN A $350 MILLION STATE TRUST FUND AND STILL LEAVE $300 MILLION OR SO IN THE FUND. IF STATES ARE UNABLE TO SPEND THE FULL AMOUNT, THE APPROPRIATION SHOULD BE CARRIED OVER UNTIL EXPENDED. SUBSEQUENT APPROPRIATIONS SHOULD BE THOSE AMOUNTS COLLECTED EACH YEAR.

OUR SECOND PRIORITY IS THE REMOVAL OF AML TRUST FUNDS FROM THE BUDGET PROCESS. OUR STATES FEAR THAT HAVING $700 MILLION IN THE TRUST FUND AND REFLECTING IN THE BUDGET PROCESS, IS A DETERRENT TO OMB IN ALLOCATING FUNDS TO FULFILL THE STATES OBLIGATION UNDER AML. WE WOULD LIKE TO SEE THE AML TRUST FUND TAKEN OUT OF THE BUDGET PROCESS SO THAT IT WOULD NOT REFLECT, ONE WAY OR THE OTHER, ON THE NATIONAL DEFICIT.

OUR THIRD PRIORITY IS TO REQUEST THAT CONGRESS MANDATE A LARGE PORTION OF THE SECRETARY'S DISCRETIONARY FUND BE ALLOCATED TO THE STATES. THE SECRETARY'S DISCRETIONARY FUND HAS ALREADY BUILT-UP A LARGE POOL OF MONEY AND ONLY A SMALL PORTION IS CURRENTLY BEING MADE AVAILABLE TO THE STATES. MANDATING THAT A LARGER PORTION OF THE FUNDS BE ALLOCATED TO THE STATES, BASED ON THE SHARE ORIGINALLY COLLECTED FROM EACH STATE, WOULD FACILITATE BETTER RECLAMATION PLANNING WITHIN THE STATE GOVERNMENT. THE END RESULT WOULD BE A MAXIMIZATION OF THE RECLAMATION CAPABILITIES OF THE FUND.

THE FOURTH PRIORITY IS THAT CONGRESS SHOULD ENCOURAGE THE COST EFFECTIVE UTILIZATION OF RECLAMATION FUNDS FOR PRIORITY I, II, AND III PROJECTS AS designated by the states. It is particularly important to encourage reclamation work on Priority I, II, and III when you become aware of the current economic climate that exists within the coal fields.

For example, in the State of Virginia, in the six (6) most heavily mined counties, they have twenty-four point nine (24.9%) percent of the labor force unemployed compared to a statewide unemployment of eight point four (8.4%) percent. Perhaps more compelling is the actual number of people represented by the statistics for Virginia, this means approximately twenty-two thousand (22,000) households are without the normal income supplied by the main provider for the family.

In Kentucky, statewide unemployment is eleven point three (11.3%) percent. The mining labor force is experiencing thirty point two (30.2%) percent unemployment. West Virginia, with its heavy dependence on the coal industry, has seventeen (17%) percent statewide unemployment while the mining industry with a labor force of fifty thousand four hundred (50,400) people has forty-nine point eight (49.8%) percent of the labor force unemployed. We are not trying to turn the reclamation program into a jobs program as such, however, congressional action to encourage completion of Priority I,II, and III Projects will facilitate more diverse construction projects whereby unemployed miners may have an opportunity to work on community projects.

Our fifth priority is to request that Congress mandate funds for the RAMP Program be granted to the state, and allocated in the same manner as the state allocation provided for in Section 402(g)(2). It should be the states prerogative to utilize the assistance of the U.S. Department of Agriculture or to implement these projects through the normal state programs. Since state government has the responsibility to set priorities for all reclamation projects, this recommendation would facilitate an orderly ranking of projects and would assure

COORDINATION BETWEEN THE STATE RECLAMATION AGENCIES AND THE DEPARTMENT OF AGRICULTURE IN THE IMPLEMENTATION OF THE RAMP PROJECTS.

OUR SIXTH PRIORITY IS THAT THE CONGRESS SHOULD MANDATE THE FEDERAL GOVERNMENT TO PAY THE PREVAILING TREASURY RATE ON A QUARTERLY BASIS ON THE ABANDONED MINE LANDS FUNDS AND THE INTEREST COLLECTED THEREON SHOULD BE RETURNED TO THE TRUST FUND. EXPERIENCE HAS PROVEN THAT THE PREVAILING TREASURY RATE TYPICALLY AVERAGES TEN TO TWELVE (10-12%) PERCENT PER YEAR. IF THIS RATE WERE TO CONTINUE, THE AMOUNT COLLECTED AS INTEREST WOULD ESSENTIALLY COVER THE ADMINISTRATION OF THE TRUST FUND AND ALLOW ALL MONIES ORIGINALLY COLLECTED FROM THE COAL OPERATORS TO BE RETURNED TO THE STATES TO CARRY OUT "ON THE GROUND" RECLAMATION.

YOUR ATTENTION IS APPRECIATED AND WE STAND READY TO PROVIDE YOU WITH MORE INFORMATION SHOULD YOU HAVE QUESTIONS REGARDING ANY OF THESE RECOMMENDATIONS.

KCB/MKR

Senator MELCHER [presiding]. Thank you, Mr. Bowling, for a very succinct and telling testimony.

Mr. Juntunen, from Montana.

STATEMENT OF DICK JUNTUNEN, ABANDONED MINE BUREAU CHIEF, STATE OF MONTANA

Mr. JUNTUNEN. The main points I would like to address are the contentions made by Mr. Harris that the State of Montana has not submitted adequate data to document hazards of public health or safety.

The record shows and our documentation shows, that since 1980 when we submitted requests for three noncoal projects, the requests were signed by the former Governor, that package has been in the Office of Surface Mining hands for 3 years. Two of the projects—it addressed two of the projects we're talking about today. The data has been there. It's a very thick document. New data was again submitted in February 1982 with our grant application requesting five noncoal sites be approved for funding for approximately $3.3 million.

The grant application was reviewed in May 1982 by two individuals in the Office of Surface Mining from the Caspar office and the Denver office. We spent several days reviewing the sites. We showed the inspectors at that time all data which we felt was relevant to the project.

In October 1982, a letter was received from Bill Schmidt in the Office of Surface Mining, notifying us that the projects were deferred for lack of data.

Again in January 1982, we resubmitted a data package, and I believe it's the same one you received in December, with the very same data that was presented in 1980 and in 1982 relevant to these noncoal abandoned mine projects.

In early January 1982, two copies of this package were submitted to the Office of Surface Mining inspector from the Casper office. He was told and instructed at that time that this was our submittal, this was the data that was available in 1982, and we were resubmitting it for their evaluation and our contention at that time was that the data was and is adequate for them to make a decision, that it was a hazard to public health and safety.

I would add, however, EPA Superfund list was not published until January 1983, so during 1982 inspection and bearing our data documentation at that time, we were only aware that it was being considered but we were not aware of where it would be on the list.

We have some—in summary, we feel we have documented these sites since 1980, and very adequately. Three of them have extensively been studied by State and Federal agencies. The EPA has funded resource projects on three of these sites since the 1970's. That's been over 10 years old. Some of these studies were tens of thousands of dollars expended on studies on a very, we feel, hazardous site. One of them runs into a national park, one of them ranks high on the EPA Superfund list. The data was there for OSM to look at all the time. It has been since 1980.

Thank you.

Senator MELCHER. Thank you.

Mr. Gallagher.

Mr. GALLAGHER. I have some prepared statements that takes somewhat longer than 5 minutes. Would you like for me to present them now or after the lunch break?

Senator MELCHER. I suspect it better be after 1:45. We're going to recess here.

Mr. GALLAGHER. I have one point to add to Mr. Juntunen's comments and that is we have brought with us the entire correspondence file for the information of the committee to fully substantiate the fact that we have in fact given notice to OSM that these sites do pose a very serious threat.

[The material referred to above follows:]

Montana Department of State Lands

Abandoned Mine Reclamation Bureau

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Juntunen

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

December 23, 1982

The Honorable Max Baucus
United States Senate
1107 Dirksen Senate Office Building
Washington, D.C. 20510

Dear ~~Senator Baucus~~ Max:

I would like to solicit your assistance in helping the Montana Department of State Lands (DSL) in its efforts to fully implement the state Abandoned Mine Reclamation program.

Since August, 1979, DSL has inventoried, engineered reclamation, and completed construction projects on abandoned coal mines in the state. The Montana Abandoned Mine Reclamation program was approved by the Office of Surface Mining (OSM) on October 15, 1980. On January 29, 1982, DSL requested $8,646,491 from OSM to fund the reclamation of 18 abandoned mines. Thirteen of the projects were to reclaim abandoned coal mines for a total of $5,287,692.00. The remaining $3,358,799.00 was requested for non-coal mine projects. On September 28, 1982, OSM approved all of the proposed coal projects but denied monies for the five non-coal reclamation projects. Herein lies the problem.

The National Abandoned Mine Reclamation program is authorized by Public Law 95-87 entitled, "Surface Mining Control and Reclamation Act of 1977." Title IV of this Act defines the "Abandoned Mine Reclamation" program, and Section 409 specifically addresses non-coal mine reclamation. Montana interprets this section to mean that the states can perform reclamation on non-coal sites if the following criteria are met:

409(a) - the non-coal project is requested by the Governor,

409(b) - funds for non-coal reclamation must be the state 50% share of the fund, and

409(c) - the "reclamation projects relate to the protection of the public health or safety."

The five non-coal sites qualify under the criteria. OSM's position is outlined in a letter from Mr. Bill Schmidt, Assistant Director, Program Operations and Inspection, dated October 4, 1982. According to the letter, the reason for the denial is "...the lack of data to corroborate Montana's contention that the proposed sites constitute a threat to public health and safety." Two of the non-coal sites, Bannack and Elkhorn, may require additional documentation, but the Alta Mine, Colorado Tailings, and McLaren Mill have sufficient corroborative data.

I have enclosed data from the Montana Water Quality Bureau and the U.S. Environmental Protection Agency. The data clearly documents and corroborates the DSL's position on the hard rock sites. The Alta, Colorado Tailings, and McLaren Mill Tailings projects are necessary for the protection of human health and safety.

Enclosed also for your information are numerous supporting documents from private industry as well as various government agencies for each of the three sites. All have been studied extensively for many years by state and federal officials. The Colorado Tailings site has been said to be the worst problem on Silver Bow Creek, which is rated #l on the E.P.A. Super Fund List nomination for the State of Montana and scored 24th nationwide.

Title IV, Section 405, Subsection (d) states that the Secretary, "shall grant to the state exclusive responsibility and authority to implement the provisions of the approved program." Montana has an approved Abandoned Mine Reclamation program which includes acid mine, non-coal reclamation projects. Montana is capable of determining what are health or safety hazards. OSM's action does not recognize the ability of state and other federal officials, who deal daily with health and safety issues, to identify and resolve problems.

Because of OSM action, construction projects in Montana totalling over $3 million have been eliminated this year. In these hard economic times, Abandoned Mine Reclamation projects would be a shot in the arm for Montana's depressed construction industry.

I urge you to review the enclosed documents and determine for yourself that the Alta, Colorado Tailings, and McLaren Tailings do constitute a hazard to public health and safety.

Your assistance during the 98th Session of Congress is essential in our fight to clean up all the abandoned mine lands in Montana posing threats to human health and safety. Congressman Vick J. Rahall, II of West Virginia intends to introduce legislation in January, 1983, which would expeditiously distribute the state share of the AML fund. Representative Rahall's proposed legislation would allow the Secretary of Interior to automatically make quarterly payments to the states with federally approved Title IV programs in an amount equivalent to fifty percent of total collected funds without affecting the Secretary's discretionary portion of the AML fund. The State of Montana strongly supports this type of an approach. (Enclosed is a draft copy of the Rahall proposal (P.L. 95-87 Amendment).

Please consider intervening on our behalf to urge OSM to fund these non-coal projects and support the Rahall legislation when it is introduced next year. If you have any questions about these sites or other AMR problems, please contact Mr. Dick Juntunen, Chief of the State Abandoned Mine Reclamation program at (406) 449-4560.

Sincerely,

Ted

TED SCHWINDEN
Governor

cc: Dennis Hemmer - DSL
Dick Juntunen - DSL
Rich Bechte'

Enclosures

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

response needed —

OCT 4 1982

RECEIVED
OCT 08 1982
STATE LANDS

Mr. Brace Hayden
Administrator
Department of State Lands
Reclamation Division
1625 11th Avenue
Helena, Montana 59620

Dear ~~Mr. Hayden~~ Brace:

This is to notify you of our decision to defer funding of Montana's recent request for five noncoal projects (Colorado Mill Tailings, McLaren Mill Site, Alta Mine Site, Bannack Mine Site, and Elkhorn Mine Site). The primary reason for this decision was the lack of data to corroborate Montana's contention that the proposed sites constitute a threat to public health and safety. Deferral of these projects will permit Montana to request funds under its administrative grant for the conduct of additional studies to quantify the environmental effects of these sites and determine the probable effects of the proposed corrective measures.

Bill Thomas, our Wyoming Field Office Director, has prepared detailed briefing papers on each of the five noncoal projects and has forwarded them to your office. If you have any questions after reviewing these papers, please do not hesitate to contact Mr. Thomas.

Sincerely,

Bill Schmidt

William B. Schmidt
Assistant Director
Program Operations and Inspection

C Brace

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
STATE OFFICE
FREDEN BUILDING
935 PENDELL BLVD.
CASPER, WYOMING 82601

RECEIVED
SEP 9 1982
STATE LANDS

September 7, 1982

Mr. Gareth C. Moon, Commissioner
Department of State Lands
Capitol Station
1625 Eleventh Avenue
Helena, MT 59620

Dear Commissioner Moon:

Brace Hayden met with me to discuss Montana's $8.6 million abandoned mine land construction grant application. At the conclusion of that meeting, I said that I was unable to recommend approval of the five non-coal projects. I stated my intention to recommend that these projects be deferred.

The primary problem was that I was unable to determine that any of the sites constitutes a threat to public health and safety or that the proposed projects would eliminate such a threat.

When I submitted the proposal to headquarters, I recommended that the five non-coal projects be deferred. If these projects are deferred, the state will have the option to request funds under their administrative grant to conduct additional studies to quantify the environmental effects of these sites and to determine the probable effects of the proposed corrective measures.

The fact that Montana's application for non-coal reclamation funding was among the first requested by a state had no bearing whatsoever on my recommendation. I am enclosing a site-by-site briefing paper which describes my rationale for recommending deferral of these projects.

The decisions on these projects will, of course, be made by the Director. This letter and the enclosed briefing paper represent only my rationale for the recommendation of the Northwest Field Office.

If you have additional questions or would like to discuss these projects in more detail, please call. If I am not in the office, Bill Grimes, of my staff, is thoroughly familiar with the projects and my views.

Sincerely,

William R. Thomas, Director
Northwest Field Office

Enclosure

WESTERN ENERGY COMPANY

115 N. BROADWAY / P.O. BOX 1899 / BILLINGS, MT. 59101 / (406) 252-2277

November 1, 1982

RECEIVED
NOV 3 1982
STATE LANDS

Mr. Dick Juntunen, Chief
Abandoned Mine Reclamation Bureau
Reclamation Division
Department of State Lands
Capitol Station
Helena, MT 59620

RE: Montana's Abandoned Mine Reclamation Program

Dear Dick:

Sometime ago you wrote to Martin White regarding the Montana Abandoned Mine Reclamation Program (AMR). In your letter, you described a problem you are having in securing funding from the Office of Surface Mining for some of your proposed AMR projects in Montana. Specifically, the projects of concern are non-coal reclamation projects. You have asked us to review your program and provide you with our thoughts on the matter. With this letter, I would like to respond to your request and apologize for our unintended tardiness.

Following our discussion with you on October 14, 1982 and our review of the AMR, I would like to state that we would support both your proposed program and your funding request. However, I must somewhat preface that support. The collection of "fees" to create the Abandoned Mine Reclamation Fund described in Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 is, in our opinion, a form of taxation. Further, that "taxation" (or fee collection) lacks representation and cannot be considered equitable as evidenced by the collection schedule and intended distribution of the funds. However, the Fund is, by statute, in place and we have been contributing to this fund at the maximum rate of 35 cents per ton for approximately five (5) years. By our estimate, Montana has accumulated approximately 21 million dollars in the Federal Abandoned Mine Reclamation Fund.

Based on your letter, it would seem the problem with your funding request centers around the proposed hard rock reclamation projects and OSM's hesitancy to grant funding for these projects. On the surface it would be easy for us to support OSM's position by arguing that the coal industry should not bear the burden of rectifying the mistakes of the hard rock mining industry. However, I am reminded of a statement often made by Paul Schmechel:

> "If man must leave his mark on the land, let it be one of intelligence."

It would not be intelligent or responsible for Western Energy, as a corporate citizen of Montana, to oppose a program which would be beneficial to Montana's citizens and environment. This is especially true when one considers that the funds necessary to achieve this environmental improvement have been generated solely through the recovery of Montana's coal resource and are, theoretically, available in trust in Washington, D.C.

Of further concern to me is what appears to be a gross inconsistency on the part of OSM in denying this portion of your funding request. Section 405(d) of the Act states, in part:

> "If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, Sections 402 and 410 excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program..." (emphasis added)

Montana's abandoned mine land reclamation program was given final approval by OSM effective November 24, 1980 (45 FR 70445). As you pointed out in your summary, Montana's program considers the reclamation of all AML coal sites and those AML hard rock sites which constitute a health or safety hazard. OSM approved the program accordingly. The inconsistancy lies in OSM's illogical argument that acid mine discharge into flowing streams does not constitute a public health problem in Montana, yet they support exactly the opposite in the East. This inconsistency is compounded by the fact that OSM granted to Montana "exclusive responsibility and authority to implement the provisions of the approved program" with their approval of the program in November 1980.

I believe one additional point should be made. As you pointed out, in Section 402(g)(2) of the Act, it is stated:

> "...(funds which) have not been expended within three years after their allocation, ...shall be available for expenditure in any eligible area as determined by the Secretary."

I share your concern with this language. Aside from the fact that we are not overly enamored with the design of the Federal Abandoned Mine Reclamation Program or the fee collection system, I would certainly hope the above language would not be abused. A strict interpretation of Section 402(g)(2) would indicate that the funds collected in the first two years of the program are already in jeopardy and subject to the Secretary's arbitrary distribution.

I believe both the reluctance of OSM to approve your funding request (in spite of their approval of Montana's AMR which specifically includes hard rock reclamation) and the potential loss of funds previously collected from Montana's coal industry should be brought to the attention of those individuals in a position to protect Montana's best interest. As I indicated earlier, Western Energy will support your efforts to secure the funding you have requested in order to meet the objectives of Montana's Abandoned Mine Reclamation Program. If we can be of further assistance, please do not hesitate to contact us.

Cordially,

CHRIS CULL
Manager, Operational Permitting

CC:kak
cc: Martin White
Art Neill
Dennis Hemmer

WR

WESTMORELAND RESOURCES, INC.

POST OFFICE BOX 449, HARDIN, MONTANA 59034 (406) 342-5241

September 15, 1982

RECEIVED
SEP 17 1982
STATE LANDS

Mr. Richard L. Juntunen
Chief
Abandoned Mine Reclamation Bureau
Department of State Lands
1625 Eleventh Avenue
Helena, MT 59620

Dear Dick:

Thank you for your letter requesting our opinions regarding the Montana Abandoned Mine Land Reclamation Program. The Federal Surface Mining Law states that fifty percent of the funds collected annually in any state shall be allocated to that state, but that funds not expended within three years after that allocation shall be available for expenditure in any eligible areas as determined by the Secretary of the Interior. Therefore, we presume that if funds allocated to the State of Montana are not used in reclaiming abandoned mined lands in Montana, these funds will eventually be transferred elsewhere. It is our opinion that expenditure of allocated funds to reclaim abandoned mined lands in Montana is proper, regardless of whether such lands have resulted from coal mining or non-coal mining. We therefore support the Montana AMR Program as proposed by the Department of State Lands, and we hope that you are successful in obtaining the funds as requested.

We view the reclamation fee of thirty-five cents per ton on surface mined coal as an unfair means of transferring money from the West to the East. The bulk of abandoned surface mined lands are in the East, and yet the reclamation fee is uniformly applied to high priced Eastern coal and low priced Western coal which is produced in very large tonnages. Because surface mining of Western coal is largely a recent development, the existence of abandoned and unreclaimed coal mines in the West is rather limited.

Thank you for consulting us on this matter, and please call if I can be of any further assistance.

My best regards,

Dave Simpson

David W. Simpson
General Manager, Operations

DWS:mlf
cc: CJP
Jim Mockler, MCC

**SPRING CREEK
COAL COMPANY**
P.O. BOX 67
DECKER, MT 59025

NERCO

RECEIVED
SEP 21 1982
STATE LANDS

September 2, 1982

Dick Juntunen, Chief
Abandoned Mine Reclamation Bureau
Reclamation Division
Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59620

RE: Montana Abandoned Mine Reclamation Program - Response

Dear Dick:

I appreciated your letter of August 30, 1982 expressing your problem of funding non-coal reclamation projects under funds provided by the Federal Surface Mining Control and Reclamation Act of 1977. "Title IV - Abandoned Mine Reclamation", under the act, explicitly sets funds aside and provides funds for reclamation of abandoned coal mines. Only in subsection (c) of section 409 are the Governors of the states provided an opportunity to modify the use of expenditures in other mined areas and only for "projects relating to the protection of the public health and safety."

It is my personal belief that Montana Department of State Lands is doing an excellent job of managing the AMR Program in Montana. I also believe strongly that monies provided by the coal industry should be used for abandoned coal mines. The coal industry provides a great deal to the economy of this country and to the individual states. Further expenditures across industry lines, i.e. (Coal to Hard Rock), places undue burden on a singular industry. Title IV is provided for abandoned coal mines and should be used for this singular purpose.

Funds have also been set aside for evaluation and study of proposed sites which may relate to the "protection of public health and safety." I suggest you apply for funds to further evaluate your non-coal projects, utilizing local agency expertise, consultants, the Department of Agriculture and Department of Interior of the Federal Government. Once a determination on each project is made based on conclusive evidence, I believe coal funds should be used on non-coal projects.

Thank you for considering my comments on this issue. Keep up the good work.

Sincerely,

J. R. PHILLIPS
Reclamation Director

JRP/det

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TED SCHWINDEN, GOVERNOR
COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

October 22, 1982

Mr. Steven L. Durham
Regional Administrator
U. S. Environmental Protection Agency
Region VIII
1860 Lincoln Street
Denver, Colorado 80295-0699

Dear Mr. Durham:

I am writing to you about a real opportunity to greatly improve water quality in Montana streams that may be lost without your vigorous and immediate effort.

On pages 12 and 13 of the enclosed Montana 305(b) report we have listed our 32 priority problem stream segments. Seven of these segments, including those ranked number 2, 3 and 5, are impaired by acid mine drainage from abandoned hardrock mining operations. Other serious acid mine drainage problems, such as Soda Butte Creek which flows into Yellowstone National Park, could not be ranked because they lack recent water quality data.

As we have clearly documented in the report, using the pollution severity analysis procedure developed by your Environmental Services Division, all of these problems have impaired fish and aquatic life and pose a threat to public health and safety. Directly or indirectly, EPA has already funded intensive surveys on many of these streams, notably Soda Butte Creek, Silver Bow Creek near Butte and Spring Creek/Prickly Pear Creek near Helena.

There is a tremendous opportunity to clean up these problems through the Abandoned Mine Land Reclamation Program, or the AML Program for short. In fact, short of direct Legislative or Congressional appropriation, it is the only opportunity for many of the streams.

The AML Program in Montana is administered by the Montana Department of State Lands (MDSL). Funds for reclaiming abandoned mine lands are generated by taxes levied against coal mining operations in the state. Approximately $5 million per year are generated in this manner in Montana and the Montana fund currently has over $20 million.

Key criteria for allocating funds to individual reclamation projects are protection of human health and safety. The MDSL has already begun work on some of the State's most serious abandoned coal mine problems where public health and safety are clearly threatened. But MDSL has been stymied by the Office of Surface Mining (OSM) in its attempt to address the State's many abandoned hardrock mine problems, which pose an equal or greater threat to human health and safety by virtue of their acidic and metals-laden discharges.

The roadblock was thrown up by OSM Northwest Field Office staff in Wyoming, who contend that the Montana hardrock sites do not pose a threat to human health and safety. We and the people at MDSL strongly disagree, and we have attempted many times to document our position as you can see by the enclosed correspondence. I think the severity analysis and the priority listing in our 305(b) report finally and conclusively confirm that these hardrock sites do indeed cause serious impairment of public water use and therefore pose a threat to human health and safety.

Another issue is whether states have the right to allocate AML funds as they see fit, given that each state's allotment is based on mining activity within that state. We feel the OSM interpretation is counter to the recent posture of the federal government to give more environmental responsibility and flexibility back to the states.

Here is a chance for EPA to do something really positive and constructive for the environment in Montana. I urge you to communicate your views on this matter to the following OSM officials:

James R. Harris, Director
Office of Surface Mining
U. S. Department of The Interior
1951 Constitution Avenue, N.W.
Washington, D. C. 20240

Bill Thomas
Northwest Field Office
Office of Surface Mining
U. S. Department of The Interior
P. O. Box 1420
Mills, Wyoming 82644

Thank you for whatever consideration you may give to this request. I am confident that your voice can make a difference. If you need more detailed information, please call Dick Juntunen at MDSL (406/449-4560) or Loren Bahls in my department (406/449-2406).

Sincerely,

John J. Drynan, M.D.
Director

Enclosures

cc: Ken Alkema, EPA Montana Office, Helena
Richard Juntunen, MDSL
Loren Bahls, Water Quality Bureau

United States
Environmental Protection
Agency

Region 8, Montana Office
Federal Building
301 S. Park, Drawer 10096
Helena, Montana 59601

EPA

AUG 16 1982

Ref: 8MO

Mr. Richard Juntunen, Chief
Abandoned Mine Reclamation Bureau
Montana Department of State Lands
1625 11th Ave.
Helena, MT 59620

Dear Mr. Juntunen:

I am writing to you to lend support in your efforts to fund cleanup of the Colorado tailings in the Butte and the Cooke City tailings near Cooke City. We at the Montana Office of EPA feel strongly that these historical tailings deposits have the definite potential to impact human health and safety. Data collected thus far indicate that these sources definitely contribute to the heavy metal loads in respective surface waters. Further erosion of these areas also leads to the escalating threat of physical instability of the tailings, thereby creating a public safety situation with grave potential.

We urge your continued pursuance of Abondoned Mine Reclamation Funds (as established in Section 401 of SMCRA) as a vehicle to quickly and decidedly remove these threats to human health and safety. My staff remains available to render technical assistance and to share data with you as these projects progress. Please don't hesitate to call on us.

Sincerely yours,

Max H. Dodson, Director
Montana Office

January 18, 1982

Mr. Murray Smith, Director
Casper State Office
Office of Surface Mining
Abandoned Mined Lands
Brooks Towers
1020 15th Street
Denver, CO 80202

Dear Mr. Smith:

Pursuant to Section 409 of the Federal Surface Control Act of 1977, I am requesting your approval for the expenditure of Abandoned Mine Land Reclamation funds on three abandoned hard rock mines in Montana. These sites include the Goldleaf Millsite at the historic town of Bannack, the Colorado Tailing Pile at the City of Butte, and the Elkhorn Mine at the historic mining camp of Elkhorn. All three sites constitute a hazard to public health and safety and have generated considerable public concern.

Montana's Department of State Lands has been designated as the state agency to administer abandoned mine land planning in this state. Montana has received approval of its State AML Program from the Office of Surface Mining. Accordingly, once your approval for these projects is secured, the Department of State Lands would apply to the Office of Surface Mining for funding for the problem areas.

If you need additional information, contact the Department of State Lands, Capitol Station, Helena, MT 59620, (406) 449-4560. Your prompt consideration of this request would be appreciated.

Sincerely,

TED SCHWINDEN
Governor

✓ cc: Gareth C. Moon, Commissioner
Department of State Lands

JAN 18

State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

December 17, 1980

The Honorable Cecil Andrus
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, NW
Washington, D.C. 20240

Dear Secretary Andrus:

Pursuant to Section 409 of the Federal Surface Mining Control Act of 1977, I am requesting your approval for the expenditure of abandoned mine land reclamation funds on three abandoned hard rock mines in Montana. These sites include the Spring Creek and Upper Clancy Creek drainages in Jefferson County, the Mammoth Mine area in Madison County and the McLaren Mill tailings in Park County. All three sites constitute a hazard to public health and safety. In addition, all three sites have generated considerable public concern.

Attached are site descriptions and related material for the three areas. Montana's Department of State Lands has been designated as the state regulatory agency for abandoned mine land planning in this state. Recently, Montana received approval of its state AML program from the Office of Surface Mining for funding for the problem areas.

Should you or your representatives need additional information, please don't hesitate to contact Commissioner Leo Berry, Jr., of the Department of State Lands, Capitol Station, Helena, Montana 59620. Your prompt consideration of this request would be appreciated.

Best personal regards.

Sincerely,

Thomas L. Judge

THOMAS L. JUDGE
Governor

Enclosures

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION
STATE OF MONTANA
(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION
1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

December 7, 1982

LEGAL MEMORANDUM

TO: U. S. Department of Interior
Office of Surface Mining

FROM: State of Montana
Department of State Lands

BY: David W. Woodgerd
Special Assistant Attorney General
Attached to Montana Department of State Lands

ISSUE: Does the State of Montana have legal authority to place liens against private land which is reclaimed pursuant to a noncoal abandoned mine land reclamation project?

ANSWER: The State of Montana may place liens against private land which is reclaimed pursuant to a noncoal abandoned mine land reclamation project by contract with the private land owner.

DISCUSSION: The State of Montana currently has an approved program for abandoned mine land reclamation. However, the Office of Surface Mining has refused to fund any noncoal reclamation projects because no authority exists to place liens against reclaimed private land. In the case of abandoned coal mine lands, statutory authority to place liens does exist. However, no explicit statutory authority exists to place liens against noncoal reclaimed land. Despite the lack of explicit statutory language, authority to place liens by contract does exist.

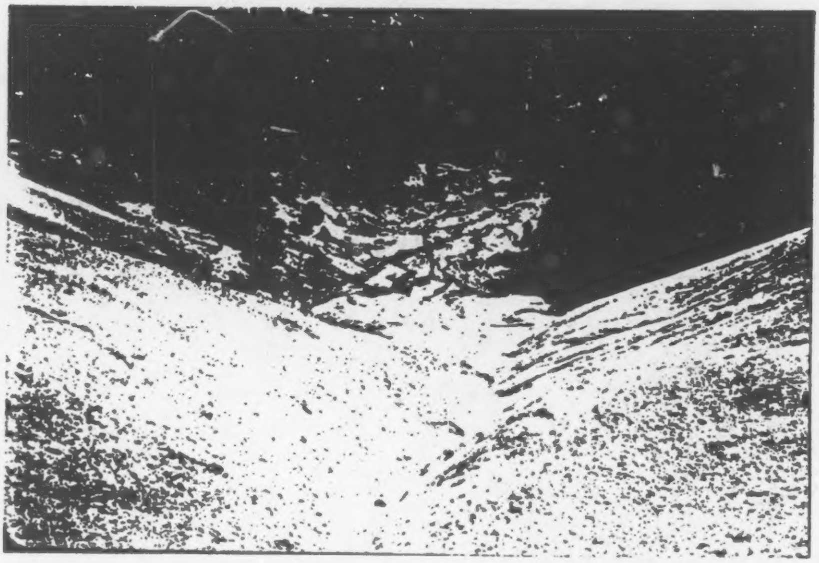
Section 71-3-102 Montana Code Annotated provides as follows:

> 71-3-102. How liens created. A lien is created:
> (1) by contract of the parties; or
> (2) by operation of law.

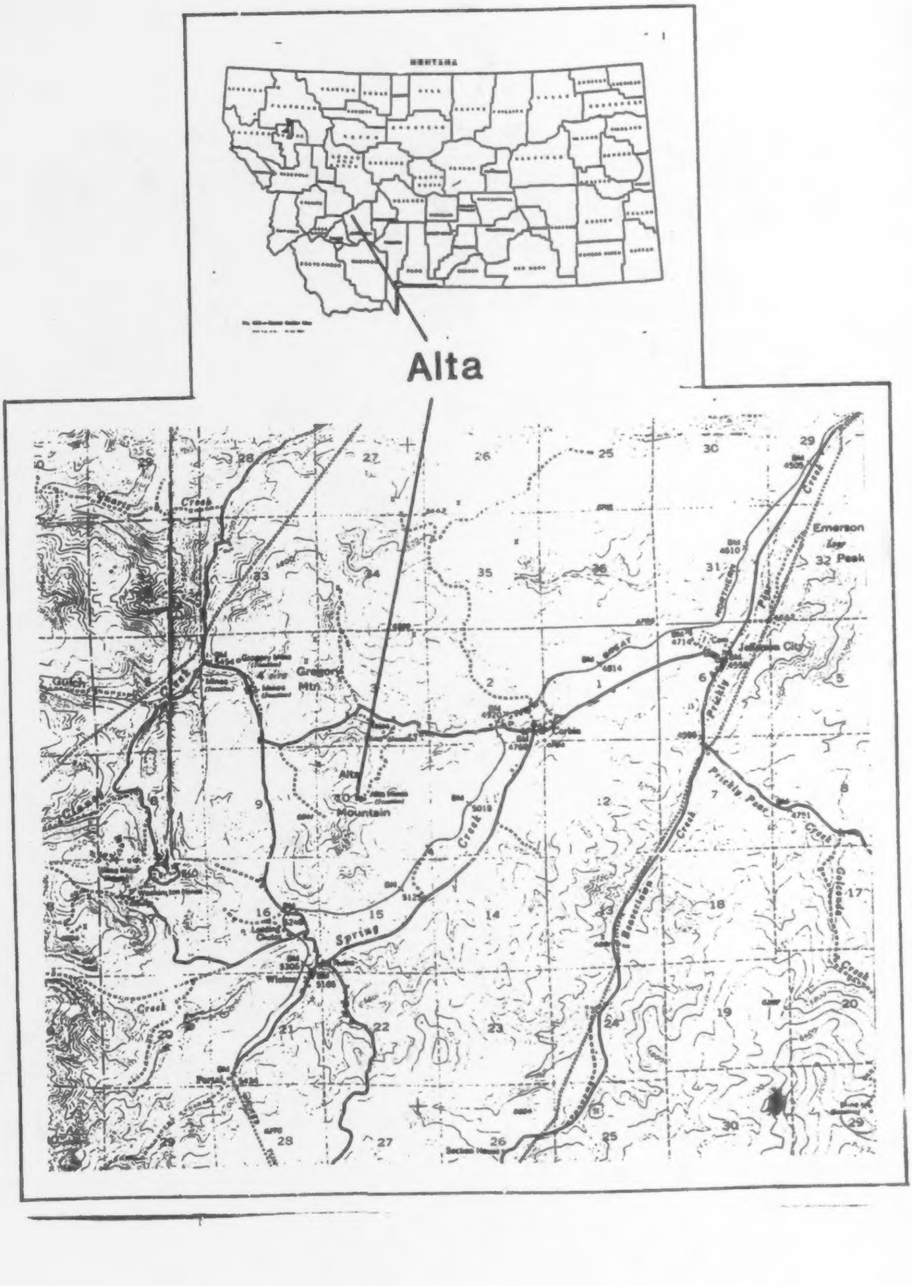
Therefore, by contract, the Department of State Lands may place a lien on noncoal reclaimed land. This would entail negotiating an agreement with the private landowner. If a lien agreement could not be negotiated and the lien was not waivable pursuant to the provisions of 30 CFR 882.13, the project would not be submitted for funding.

ca

ALTA



279,000 TONS


MONTANA
Alta
Gregory Mtn
Alta Mountain
Emerson Peak
Jefferson City
Corbin
Wickes
Spring Creek
Prickly Pear Creek
Gulch
Creek

NORTHWEST FIELD OFFICE BRIEFING PAPER

Alta Mine Site
Jefferson County

The Alta Mine site is located several miles upstream of the small community of Corbin. It contains tailings from past mine processing, old mine structures, adits, and tunnels. The tailings pile is located in the creek channel. Surface water discharging from adits and tunnels above the tailings goes underground through the tailings pile. It then reappears at the base of the tailings in a very acid condition and with concentrations of various metal contaminents.

The resultant water quality is attributing to degradation of the downstream biota and possible contamination of domestic water supply.

The State of Montana maintains that the unobstructed mine openings and unstable toxic mine waste piles threaten human health and safety. The July 1981 Prickly Pear Creek Report, of which Corbin Creek is a tributary, form the basis of the State's conclusion. The project proposes to remove the mine waste and place locking or permanent bulkheads at the mine openings. The tailings would be reprocessed in coordination with a private company if economical recovery of minerals can be made.

OSM conducted an investigation of the site accompanied by Montana A.M.R. staff. Various reports and file information provided by the State were also reviewed. While at the site, active exploration for the purpose of determining economic mineral recovery potential was observed. Based upon the information made available, the Northwest Field Office of OSM recommended that approval of the Construction project request be deferred. However, additional investigation and planning for mitigation of the environmental quality aspects from the tailings could be continued under the Administrative Grant. Correction of the problem could be made within the priority sequence as specified in P.L. 95-87. This recommendation was based on the following:

-The Prickly Pear Creek Report identified numerous contamination sources along the 45± mile drainage. Corbin Creek, a tributary of Prickly Pear, contained additional contamination sources other than the Alta Mine. Specific data from wells tested in the Corbin area did not support that contamination of domestic water supply was occurring.

-Degradation of the biota downstream from the Alta Mine source would appear to be substantiated. However, due to the numerous contamination sources, it is not clear as to what actual benefit the correction of this single source would have on the larger problem addressed in the Prickly Pear Report.

We therefore concluded that the required demonstration for the need of protection of public health and safety, as required in Section 409(c) of P.L. 95-87 was not established. Furthermore, the mine waste piles had potential for being reworked and in which case, would not meet criteria for disposal in accordance with section 409 of P.L. 95-87.

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION
STATE OF MONTANA
(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION
1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

MEMO

TO: Office of Surface Mining, Mills, Wyoming

FROM: Montana Department of State Lands, Abandoned Mine Reclamation Bureau

RE: Response to Briefing Paper on Alta

DATE: December 13, 1982

In reference to William Thomas' letter of September 7, 1982 stating the recommendations of the Northwest Field Office with regard to our non-coal projects:

In the briefing paper it was stated, "OSM conducted an investigation of the site....". The 'investigation' by the two OSM officials consisted of a site visit of no more than three hours on the ground, and a cursory review of DSL files was just as brief. Countless hours of data collection by state agencies and the EPA are made more than evident by the volume of reports done on the Upper Prickly Pear (see reference list).

OSM has stated that, "specific data from wells tested in the Corbin area did not support that contamination of domestic water supply was occurring." Referenced in WQB letter of 10/17/80, clearly states, "contamination of domestic wells have occurred." Also please reference Page 112, WQB Report #81.2.

OSM has stated, "it is not clear as to what actual benefit the correction of this single source would have on the larger problem in the Prickly Pear Report. Reference Page 121 of the same Report #81.2, Page 17 from Anthology of a Stream, WQB letter of 5/6/80, WQB letter of 3/13/80, and Fish & Game letter of 10/10/80. All of the above references directly address the statement that the Alta Mine is the main source of toxic metals and sediment to the Prickly Pear.

We have addressed the question of the lien situation. See legal memorandum from Dave Woodgerd dated 12/7/82.

Reference list - Alta Mine

1- Anthology of a Stream, Mt. Environmental Sciences, Kit Walther, 1978

2- WQB letter dated 5/6/80

3- WQB letter dated 3/13/80

4- Prickly Pear Creek, WQB Report #81.2, Mt. Dept. of Health & Environmental Sciences, July 1981

5- WQB 208 Report, Mt. Dept. of Health & Environmental Sciences, 1982

6- Fish & Game letter dated 11/10/82

7- Prickly Pear Sportsman dated 2/14/80

8- Prickly Pear Creek study, Reclamation Master Plan, DSL-AMRB, 1982

9- EPA studies on fisheries of Spring and Corbin Creek, 1981, 1982

MH/sg

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
WATER QUALITY BUREAU

THOMAS L. JUDGE, GOVERNOR
COGSWELL BUILDING
ROOM A206
STATE OF MONTANA
(406) 449-2406
HELENA, MONTANA 59601

October 17, 1980

Mr. Leo Berry, Jr., Commissioner
Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Berry:

The purpose of this letter is to register our support of proposed reclamation efforts in the upper Prickly Pear Creek drainage, to list reported and established water quality impacts resulting from abandoned mining activities in the upper Prickly Pear watershed, and to inform you of our progress in documenting the extent and severity of these impacts.

Neglected hardrock mine tailings and settling ponds from long abandoned hardrock mines are a prominent feature in the Corbin and Spring Creek drainages near Corbin and Wickes in Jefferson County. They have had serious impacts on the ground and surface water resources in the area. Pollutants in Corbin and Spring Creeks, in the form of acid, heavy metals and sediment, are carried to Prickly Pear Creek and are detectable nearly to this stream's mouth some 25 miles distant. Documentation is available of severe water quality degradation and subsequent threats to public health and safety.

To assist you with requests for reclamation and abatement funding, we are providing a list of some of the diverse problems attributable, at least in part, to these mine-related sources:

(1) Toxic heavy metal contamination of domestic wells in Corbin, Montana.
(2) Intermittent contamination of Corbin area resident domestic water supplies (upper Spring Creek) with heavy metal contaminated runoff.
(3) Several livestock deaths believed attributable to consumption of Corbin Creek water.
(4) A public health hazard posed by toxic metals and acid in surface waters in the vicinity of Corbin and Jefferson City.
(5) Reported mortality of home gardens and lawns from irrigation with Corbin Creek water.
(6) Reported corroded plumbing in Corbin residences from contact with acidic Corbin Creek waters.
(7) Severe impairment of a quality cold-water fishery in Spring Creek

below the confluence of Corbin Creek and in Prickly Pear Creek below the confluence of Spring Creek due to silt, toxic metals, and acid.

(8) Debilitation of the aquatic life-support system in Corbin, Spring, and Prickly Pear Creeks as a result of heavy metals, acid, and silt and their effects on small plant and animal life.

(9) Severe sedimentation in Spring, Corbin, and Prickly Pear Creeks, contributed in part by highly erosive tailings piles in and along these streams. The sediment has caused problems with irrigation (plugged headgates, etc.), fish spawning and the production of fish-food organisms, and with operation of ASARCO'S dam on Lower Prickly Pear Creek at East Helena. Periodic flushing of accumulated silt from ASARCO'S reservoir has resulted in several water quality violations.

(10) Deterioration of riparian habitat along Corbin and Spring Creeks. The finely divided, highly erosive material does not lend itself well to the establishment of vegetation. Toxicity may also be a factor.

(11) Deposition of metal-bearing sediments on agricultural land, resulting in temporary sterilization.

Much water quality data on the pollution problems in Corbin, Spring, and Prickly Pear Creeks is on hand. In addition, the Water Quality Bureau has completed three field investigations in the Prickly Pear drainage within the past year that will bear on the abandoned mines problem. One deals with the chemical quality of well waters in the Corbin area. Another addresses the physical integrity of stream banks throughout the drainage. The third assesses water quality and biological health in the mainstream of Prickly Pear Creek from headwaters to mouth. Most of the chemical and biological samples collected in the course of these studies remain to be analyzed and the results interpreted. We will supply you with our findings as they become available.

We strongly support your efforts toward rehabilitation of the area and will be happy to assist you in any way that we can. Please keep us posted on your progress. Thank you.

Steven L. Pilcher, Chief
Water Quality Bureau
Environmental Sciences Division

SLP/bb

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A C Knight, M D, F C C P
Director

March 13, 1980

Mr. Richard Juntunen
Reclamation Division
Department of State Lands
Helena, Montana 59601

Dear Mr. [illegible] ~~Juntunen~~:

This letter is in response to your March 5 letter to Gary Ingman regarding the correctness of designating the Alta Mine and Mill site and the Corbin Flats area as a priority reclamation project under the Abandoned Mined Lands (AML) program.

In comparison with similar water quality problems on upper Ten Mile Creek near Rimini, we definitely do view the Prickly Pear situation as a priority, for the following reasons: (1) Impacts on beneficial water uses are more severe and extensive in the Prickly Pear system than they are in the Ten Mile system and (2) there is, at present, a concerned and organized body of public support for cleaning up Prickly Pear Creek.

Metals from abandoned mines along upper Prickly Pear Creek tributaries can be detected nearly to the mouth of Prickly Pear Creek at Lake Helena and biologically debilitating levels of these same metals have been measured as far downstream as Montana City. Although not well documented, we also believe that these same abandoned mines and mill sites contribute significantly to the overall Prickly Pear Creek sediment load, which is severe enough to cause problems with dam and irrigation headgate operation and with fish spawning and fish food production.

The Prickly Pear Sportsmen of East Helena comprise the nucleus of local public support in favor of rehabilitation efforts on Prickly Pear Creek. Moreover, this group has tentatively identified the upstream mining problems as the key element in this cleanup effort. A movement is also underway, facilitated by the Prickly Pear Sportsmen and the Water Quality Bureau, to form a broad-based Prickly Pear Task Force comprised of local civic, business and conservation leaders who have expressed an interest in restoring Prickly Pear Creek to an elevated state of usefulness. Although, as you are well aware, there are other severe water quality problems arising from past mining activities in Montana (e.g., Soda Butte Creek near Cooke City and Uncle Sam Gulch and High Ore Creek near Boulder), I know of no other instance of organized public support for rehabilitation of a stream so affected.

EEO/AFFIRMATIVE ACTION AGENCY

From the 1977 assessment by Dick Pedersen[1] and from more recent water quality monitoring in the Prickly Pear drainage conducted by Gary Ingman and others on our staff, the Alta Mine and Mill site and the Corbin Flats area are clearly the most serious mining-related pollution sources in the drainage. On the basis of this finding and on the foregoing discussion, we support your immediate attention to the Corbin Creek problem.

We will be happy to assist in any way that we can. Please coordinate any subsequent water quality testing with Gary Ingman of our staff, and please keep us posted on your progress.

We view the Prickly Pear Creek cleanup effort as a model for cooperative, locally directed water pollution control. Hopefully, the enthusiasm, the momentum and the anticipated successes generated here will carry over to other similar problem areas in the state.

Sincerely,

Steve L. Pilcher

Steven L. Pilcher, Chief
Water Quality Bureau
Environmental Sciences Division

SLP:LLB:mg

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[1] Pedersen, Dick. 1977. An assessment of mining impacts on water quality in the northern Boulder Batholith. Water Quality Bureau, Helena.

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

May 6, 1980

A C Knight M.D. F.C.C.P
Director

Mr. Norman W. Peterson
Habitat Preservation Coordinator
Fisheries Division
Montana Department of Fish, Wildlife & Parks
Helena, Montana 59601

Dear Norm:

At our Prickly Pear Creek meeting on December 3, 1979, we discussed the need for fishery data to document the influence on fish populations by various perturbations in the drainage. At that meeting, my notes indicate that you would seek to acquire fish sampling equipment for the Helena office of DFW&P in order to accomplish this work. My notes also indicate that, once such equipment is available, the staff of the Water Quality Bureau would assist the DFW&P in collecting such information.

We are, at present, in need of fish population data to support an effort by many concerned government agencies and private citizens to restore a portion of the Prickly Pear drainage that has been profoundly polluted by the Alta Mountain mine seepage and tailings. Specifically, we need relative fish abundance and diversity data for sections of Spring Creek above and below the ~~mount~~ mouth of Corbin Creek, and for sections of Prickly Pear Creek above and below the mouth of Spring Creek. Although of lesser priority, the Department of Health and Environmental Sciences would also be interested in similar data for sections of Prickly Pear Creek immediately above and below the Helena STP discharge.

I would appreciate hearing from you regarding any progress you may have made in obtaining the appropriate equipment. My staff will be happy to assist in any way that we can.

Sincerely,

Loren L. Bahls, Head
Water Quality Management Section
Water Quality Bureau
Environmental Sciences Division

LLB:mg

cc: ✓Richard Juntunen, Department of State Lands
Ken Knudson, Department of Fish, Wildlife and Parks
Charles Wood, Water Quality Bureau

EEO/AFFIRMATIVE ACTION AGENCY

Recommendations

According to the Department of State Lands, the Spring Creek drainage has received approval by the federal Office of Surface Mining as a priority reclamation project under the Abandoned Mine Lands reclamation program. Requests for funding currently are being made.

Based on the findings of this study, the following efforts would result in the most significant improvements in Spring Creek and, in turn, in Prickly Pear Creek water quality.

1. The Alta Mine drainage should be the Number One reclamation priority area. There is little doubt that it is the most critical acid and metal source in the entire Prickly Pear drainage. It is advised that the pollutant source be eliminated by plugging the Alta Mine adit where the flow originates, or by chemical treatment of the discharge to raise and stabilize the pH and precipitate the metals. Removal of the precipitated metals would be necessary.

2. The second priority reclamation area should be the headwaters of Corbin Creek upstream from the entrance of the Alta discharge. This area is the most significant source of sediment and turbidity in Spring Creek. Efforts should be directed toward elimination of the critical sediment sources -- the Bertha Mine tailings, other unvegetated tailings piles, and the unstable soils and streambanks in general. Physical removal of tailings most likely will be required. Additional topsoil and vegetation will have to be brought in to stabilize the resultant scars. A reduction of the sediment load in this area will reduce heavy metals which are bound to the sediment.

3. Due to limited and possibly inaccurate data, a sediment problem has not been proven in the Corbin Flats. However, with its unvegetated, sloughing streambanks, the area is a prime candidate for sediment production during high flows. Metals were shown to increase in Spring Creek as it flowed through the flats under heavy runoff conditions. Therefore, the author feels the area warrants attention as a third reclamation priority. Work should be directed toward stabilizing the streambanks and establishing vegetation. Riprap may be required.

4. Future water-quality monitoring in the Spring Creek drainage should include suspended-solids measurements upstream and downstream from Corbin Flats in conjunction with dissolved and total-recoverable or total-metals sampling.

   The author also recommends monitoring of Spring Creek above Corbin Creek when there is direct overland flow from the intermittent tributaries near Wickes. This would document the severity of pollution in Spring Creek at such times and determine health hazards to Corbin residents who drink from the creek.

References

APHA. 1975. Standard Methods for the Examination of Water and Wastewater. 14th Edition. American Public Health Association, Washington, D.C.

Braico, R.D., and M.K. Botz. 1974. Water Quality Inventory and Management Plan — Missouri-Sun-Smith River Basin, Montana. Montana Dept. of Health and Environmental Sciences, Water Quality Bureau, Helena.

Nichlos, Lacy E. Jr., and F.J. Bulow. 1973. Effects of Acid Mine Drainage on the Stream Ecosystem of the East Fork of the Obey River, Tennessee. Journal of the Tennessee Academy of Sciences.

Pedersen, R. 1977. An Assessment of Mining Impacts on Water Quality in the Northern Boulder Batholith. Montana Dept. of Health and Environmental Sciences, Water Quality Bureau, Helena.

Traynor, James. 1969. The Effect of Acid Drainage Pollutants Upon Fish Habitat in the Prickly Pear Drainage. Montana Dept. of Fish and Game, Helena.

USEPA. 1976. Handbook for Sampling and Sample Preservation of Water and Wastewater. EPA-600/4-76-049. U.S. Environmental Protection Agency, Cincinnati.

USEPA. 1976. Methods for Chemical Analysis of Water and Wastes. EPA-600/4-79-020. U.S. Environmental Protection Agency, Cincinnati.

State of Montana. 1956. Water Resources Survey, Jefferson County, Montana. State Engineers Office, Helena.

Personal communications

Hill, K. Montana Dept. of Fish, Wildlife and Parks. Interoffice memorandum of October 10, 1980, concerning Spring Creek fishery inventory results.

Juntunen, R. Reclamation Division, Montana Dept. of State Lands. May 1980. May 1981.

STATE OF MONTANA
DEPARTMENT OF FISH AND GAME
HELENA, MONTANA

Office Memorandum

TO : Gary Ingman DATE: October 10, 1980

FROM : Kurt Hill

SUBJECT: Examination of fish population in Spring Creek

As you requested earlier last week a cursory examination of the fish population in Spring Creek immediately above and below its confluence with Corbin Creek was conducted on October 2. Approximately 300 yards of stream were electrofished. The mouth of Corbin Creek marked the middle of the section of stream we electrofished. I was assisted in counting the fish we turned and netting specimens for identification by Mr. Greene and Mr. Weber of the Water Quality Bureau.

The stream section we shocked above the mouth of Corbin Creek held a good number of Brook Trout and a few small Rainbow Trout. In this stretch of stream we counted 53 trout. The section of stream we shocked below the mouth of Corbin Creek, however, held very few trout. Here we found only two Brook Trout in 150 yards of stream. There is some possibility that these two fish were not actual residents of this stretch of stream. They may have drifted down from above the mouth of Corbin Creek as the upper section was electrofished first. It might also have been that these were migrating fish from further down stream as Brook Trout are actively migrating to spawning sites at this time of year. Whichever the case may be, it appears obvious that the Spring Creek trout population is severely depressed or entirely absent immediately below the mouth of Corbin Creek.

gs

cc: Ken Knudson
Mark Carlstrom, DSL

PRICKLY PEAR SPORTSMANS' ASSOCIATION
BOX 48
EAST HELENA, MONTANA 59635

February 14, 1980

Mr. Leo Berry, Commissioner
Department of State Lands
Helena, MT 59601

Dear Mr. Berry:

The Prickly Pear Sportsmans' Association has taken as one of its projects an effort to encourage the clean up of Prickly Pear Creek upstream from East Helena, Montana.

We have been briefed by the Department of Health and Environmental Sciences concerning acid mine drainage, erosion of old tailing ponds and other problems currently degrading the stream. We would like to have you or one of your staff tell our group about the opportunities available for reclaiming abandoned mine sites. We would hope the discussion could cover the Federal Surface Mining Control Act of 1977 and the State Resource Indemnity Trust Program.

Our club meets in the VFW Club in East Helena the second Tuesday of every month. We would like to have someone from your department talk to our group on the 11th of March at 7:30 p.m.

Our club is a hospitable group, serving free lunch and beer at each meeting, so you may want to appear in person if your schedule allows.

Sincerely,

James A. Posewitz
Secretary

JAP/sd

cc: Jim Richard

ECEIVE
FEB 15 1980

PRICKLY PEAR CREEK — *Healing something as fragile as a stream takes time and cooperation. Although the dredge tailings along Prickly Pear Creek are not as visible as they used to be, they still can be found. The picture on the opposite page shows natural restoration between Montana City and Clancy is working, but in many places vegetation on dredge piles (upper right) is scarce. Restoration in some parts of the drainage is even slower, such as up Spring Creek, where traces of iron—called "yellow boy"— can still be found (bottom). Rehabilitation is a continuing process, as shown in the circular picture (upper right). Mike Pasichnyk, Water Quality Bureau, takes a water sample near Mountain View School, in the Helena Valley.*

photograph by KIT WALTHER

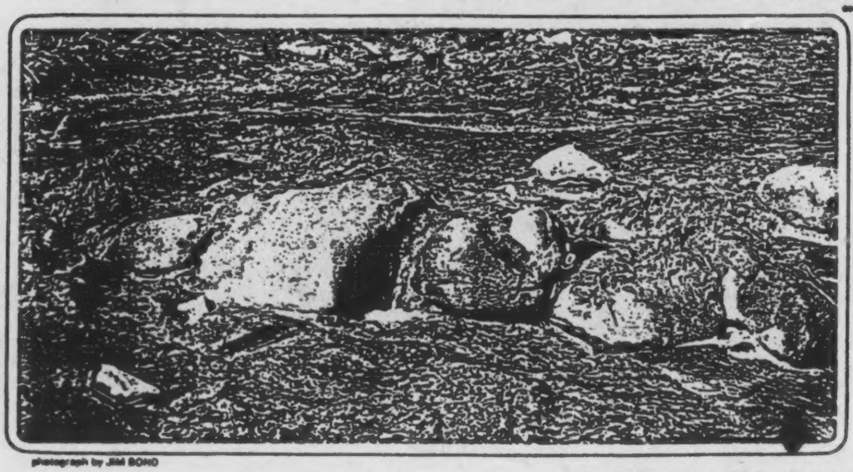
Prickly Pear Creek

Anthology of a Stream

by Kit Walther

Prickly Pear Valley and Prickly Pear Creek have their origins south of Helena. In the summer of 1862 "Gold Tom," one of the area's original prospectors, gave this little known valley an abrupt introduction to the mining world by finding gold nuggets in the gravels of Prickly Pear Creek near Montana City. Gold fever caught on quickly and soon several hundred miners were working

continued



photograph by JIM BOND

streams. Fish populations too, are greater above than they are immediately below Spring Creek.

Looking at the concentrations of dissolved metals helps explain the biological changes in Prickly Pear Creek. Above Spring Creek, metals concentrations in the creek are below the levels toxic to aquatic life (Figure 2). In contrast, in one upper tributary of Spring Creek and Spring Creek itself, metals range from 1,000 to 10,500 times the levels toxic to aquatic life. Below Spring Creek, concentrations of metals in Prickly Pear Creek decline because of downstream dilution. Still, even six miles below Spring Creek, metals remain much higher than the levels safe for aquatic life.

Mud and Fish Don't Mix

Too much sediment can be as detrimental to cold water stream life as heavy metals. Sediment covers and smothers aquatic habitat, insects and fish eggs. Spring Creek, the major source of toxic metals is also a major source of sediment in Prickly Pear Creek.

This graph compares the number of pollution sensitive and pollution tolerant organisms at several locations above and below the entrance of Spring Creek (data reported from THE EFFECT OF ACID POLLUTANTS UPON FISH HABITAT IN PRICKLY PEAR DRAINAGE, a report by Jim Traynor, 1969 for the Department of Fish and Game).

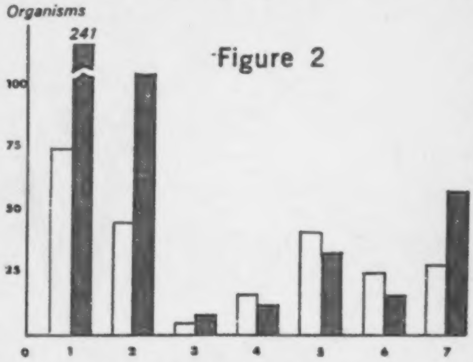


Figure 2

1 — 0.5 miles above mouth of Spring Creek
2 — Just above mouth of Spring Creek
3 — 0.2 miles below mouth of Spring Creek
4 — 0.7 miles below mouth of Spring Creek
5 — 3.5 miles below mouth of Spring Creek
6 — 4.5 miles below mouth of Spring Creek
7 — 5.5 miles below mouth of Spring Creek

☐ *Tolerant Organisms (midges and other fly larvae). Indicators of poor water quality.*

▨ *Sensitive Organisms (Stoneflies, Mayflies and Caddis Flies). Important trout food and indicators of good water quality.*

In the late 1800's, four crude smelters and several ore concentrators in the Spring Creek drainage processed ores from the surrounding hills. Remnants of old settling ponds and waste dumps still remain. High water from snow-melt runoff and intense rainstorms cut through the fine materials, carrying large amounts of sediment to Prickly Pear Creek.

In 1975, runoff generated by warm spring weather and heavy rains washed massive amounts of sediment into Prickly Pear Creek, cutting deeply through the tailings around Corbin. More than 90 percent of the sediment in Prickly Pear Creek below Jefferson City came from Spring Creek. Downstream the sediment raised havoc with farmlands, irrigation headgates and aquatic life.

Sediment Problems Not New

The "easy-to-get" placer deposits (gold bearing gravels) were largely played out by 1875. With the introduction of the big gold dredges in 1933, placer mining got its second boom. Drag lines and dredge boats worked the gravels from East Helena to Jefferson City up until 1948. Sporadic dredging occurred even as late as 1960. The big dredges permanently scarred Prickly Pear. The Yuba dredge boat (the last to work the creek channel) was capable of gouging out 6,000 cubic yards of gravel a day. As the dredge worked its way upstream, large steel buckets on a revolving chain scooped vegetation, topsoil, gravel and muck from the valley floodplain and stream channel. The dredged materials were dumped into a large sluice box in the boat and pumps provided running water to hydraulically separate the gold from the dredged material. From the rear of the dredge, muddy water was discharged directly to the creek and wasted gravel and clods of dirt were stacked in hugh spoil piles.

The new interstate highway along Prickly Pear leveled most of the gravel dredge piles, but in a few places they may still be seen supporting a few wisps of tough range grasses and pines. Years after placer mining ended, the dredge piles provided a chronic source of sediment. Severe channel alterations and vegetation destruction stripped much of Prickly Pear's natural trout habitat.

The creek has healed to some extent from its experiences with placer mining. Stream bank vegetation has come back in places, and the old dredge piles are no longer a big source of sediment. Deep dredge ponds which floated the Yuba dredge boat can still be seen in a couple of places, but for the most part the scars of placer mining are obscured by other impacts of more modern times.

A Mark of Progress and Change,
Left by People in a Hurry...

Time and again Prickly Pear Creek has been altered for man's needs. Today most stretches of quality trout habitat are gone for good.

Placer mining, stream alterations for rail and highway construction, industrial development and flood protection of agricultural lands have changed more than 51 percent of Prickly Pear's 41-mile length. Important

continued

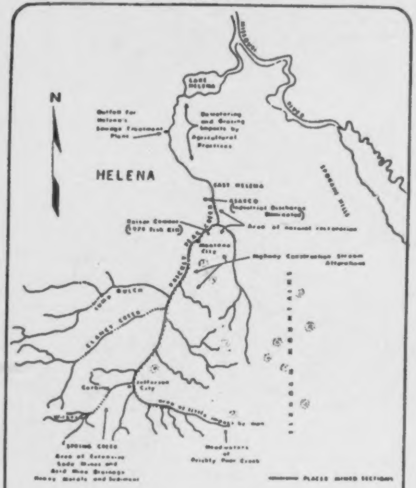
the placers. Later placer gold discoveries in Golconda Creek, Lump Gulch and others, and lode mine discoveries, like Mount Washington soon brought a great wave of miners to the valley. Prospectors swarmed over every hill and ravine in search of new placer and lode deposits.

Mining towns sprouted like mushrooms after a long spring rain. At their peak, towns with names like Clancy, Montana City, Lump City, Corbin and Wickes boasted populations of up to 1,500 people. Today little remains of the busy constellation of mining towns which suddenly appeared just after the Civil War, thrived brightly for several decades, then faded at the end of the nineteenth century. Most now are little clusters of aging buildings huddled near weedy spoil heaps and around ruins of old mines and mills.

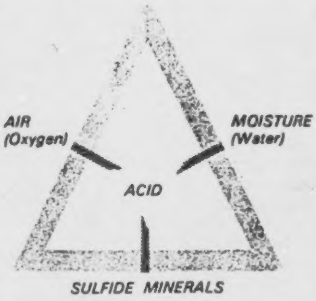
Just as 1862 began a new life for the immigrants who stumbled onto "Gold Tom" and stayed behind to work the elusive gravels of Prickly Pear Creek, so began the demise of the famous creek which once meandered peacefully through alders and willows to the Missouri River.

Subtle Killers: Acid and Metals

The high mountains surrounding Prickly Pear are mostly granite. Sulfide ores dug from the rich quartz veins yielded millions of dollars in gold, silver, lead, zinc and copper. The mined rock with no mineral value was dumped in piles at entrances of mine shafts, and waste materials from milling and smelting were haphazardly disposed of in the gulches and creek bottoms.


N
HELENA
Lake Helena
Outlet for Helena's Sewage Treatment Plant
Dewatering and Grazing Impacts by Agricultural Practices
Missouri River
Spokane Hills
East Helena
ASARCO (Industrial Discharge Eliminated)
Area of natural restoration
Montana City
Highway Construction Stream Alterations
Prickly Pear Creek
Lump Gulch
Clancy Creek
Corbin
Jefferson City
Wickes
Spring Creek
Area of Extensive Lode Mines and Acid Mine Drainage Heavy Metals and Sediment
Area of little impact by man
Headwaters of Prickly Pear Creek
PLACER MINED SECTIONS

PRICKLY PEAR CREEK DRAINAGE



TRIANGLE OF CONDITIONS NEEDED TO PRODUCE ACID MINE SEEPS

Figure 1

Once exposed to the air and moisture, the sulfide minerals in the waste materials began to slowly decompose and produce sulfuric acid (Figure 1). Up Spring Creek, where the hub of early day mining was situated, there remain huge piles of worthless sulfide minerals, which have become the source of a nearly endless supply of acid. Acid water seeps from the walls of mine shafts, through the waste dumps and tailings piles and, finally, enters the drainages of Spring Creek above Jefferson City.

Heavy metals associated with the minerals (like copper, zinc, iron and lead) are readily dissolved in the acid seeps. Their concentrations in water are the highest where the seeps form, and become more dilute as they wash downstream. The most obvious metal of the seeps is iron. Its orange salts (called yellow boy) can be seen staining the shoreline rocks and stream bottom of Spring Creek. The most toxic metal in solution is zinc.

The acidic water and dissolved metals have a drastic effect on the biological life of upper Spring Creek. The creek is mostly sterile around the small mining town of Corbin. Further downstream the acid waters have no effect on Prickly Pear Creek because they are diluted by fresh water flowing into Spring Creek. The heavy metals on the other hand continue to have a profound effect downstream. Even at extremely low concentrations heavy metals harm aquatic organisms. Aquatic insect populations are reduced in Prickly Pear Creek for more than six miles below Spring Creek. Less desirable, pollution tolerant insects, such as dipterans (the flies) dominate the insect community below Spring Creek. Desirable insects, such as mayflies, stoneflies and caddis flies finally begin dominating the insect community 5½ miles below Spring Creek. Prickly Pear Creek above Spring Creek (where mining impacts are few), supports abundant and diverse populations of aquatic insects that are typical of cold water mou

continu...

meanders (creek bends) have been eliminated, pools and riffles destroyed and bank vegetation removed. The stream is actually shorter, and in places the stream velocities are greater. Erosion is a problem in many of the channelized sections. Trout populations have never returned to normal where stream alterations drastically changed the original channel.

The Fish Kill of 1974

Acid waters are not conducive to aquatic life and neither is the opposite extreme. Strong alkaline waters can be dangerously toxic to fish.

When a warm January chinook in the Helena area produced a heavy snow melt, runoff water severely eroded the old Kaiser Cement industrial waste dump. Approximately 2,200 cubic feet of strong alkaline material was washed into Prickly Pear Creek. As the slug of material entered the creek it instantly raised the alkalinity to intolerable limits, killing some 4,000 fish for a distance of three miles downstream.

Fortunately, the damage was not irreversible and Prickly Pear Creek recovered.

Cleaning Up Pollution

ASARCO (American Smelting and Refining Company), is a custom lead smelter and zinc plant located along Prickly Pear at East Helena. It succeeded the largest ore reduction plant in Montana, which until 1893 was located at Wickes. For many years, fish kills below the ASARCO discharge occurred. Hot water loaded with heavy metals and sediment from the ASARCO discharge water (as high as 82° Fahrenheit (F)) raised instream temperatures by 5.7° F, compounding the toxic effects of the heavy metals.

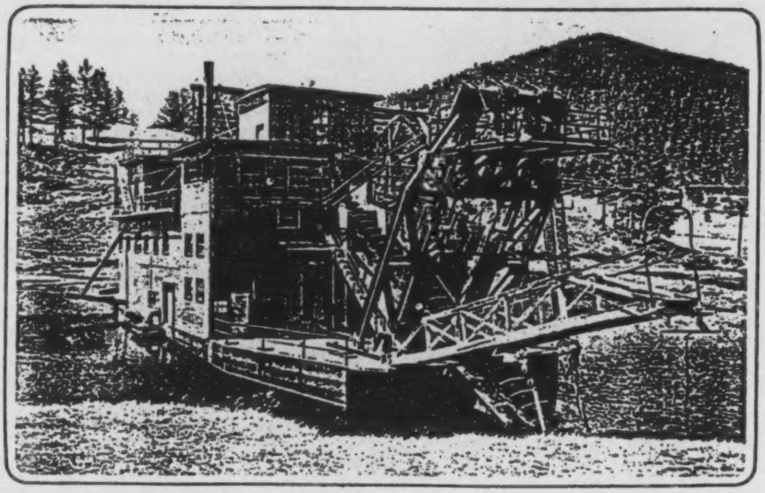
ASARCO began a series of steps in 1972 which eventually eliminated their discharge from Prickly Pear Creek. A "no-discharge" treatment system was constructed that did away with the high temperature waste waters and an estimated 223 pounds of metals per day that entered Prickly Pear Creek.

Still More Degradation Downstream

Mining, industry and road construction have had the greatest impacts on Prickly Pear Creek above East Helena. Natural restoration and pollution abatement efforts have breathed new life back into some of the creek (particularly the area immediately above East Helena) where a few remnants remain of a healthy trout fishery.

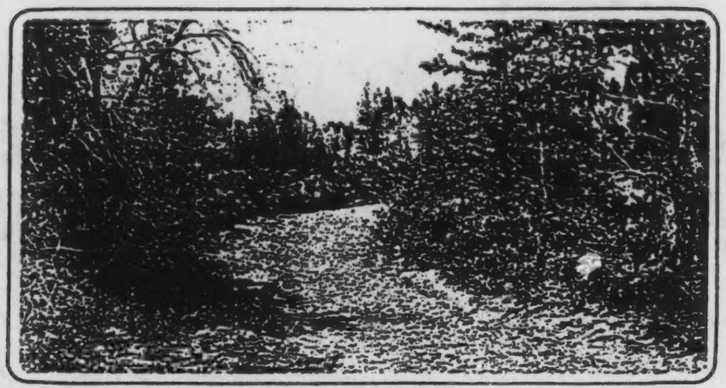
But below East Helena, irrigation, grazing and the Helena Sewage Treatment Plant have persisting impacts which severely degrade the water quality. Heavy irrigation withdrawals in the summer leave the creek with little or no flow. Where there is flow in the summer months from returning irrigation water, the temperatures and nutrients in the stream are high. Heavy grazing in the lower stretches of the creek has also damaged bank vegetation and accelerated stream bank erosion. Here, aquatic insect numbers indicate substantial stress and trout are scarce.

continued



photograph by KIT WALTHER

THE YUBA—*The Yuba dredge once could gouge out 6,000 cubic yards of Prickly Pear stream gravel a day. For a number of years the Yuba sat in a dredge pool east of Interstate 15, just southeast of Jefferson City, a quiet reminder of another day. However, recently it was shipped to Brazil where it's again looking for gold.*



photograph by JIM BOND

DRY—*Dry years and heavy irrigation threaten the lower reaches of Prickly Pear Creek. In some instances there simply isn't enough water to go around, aspictured just north of East Helena several years ago.*

Compounding the agricultural effects is Helena's sewage treatment plant discharge. Although a tremendous improvement from years past, stream studies have shown the treatment plant still adversely impacts aquatic life and water quality. Changes in aquatic life above and below the sewage outfall indicate continuing organic pollution. Immediately below the sewage outfall, sewage bacteria (Sphaerotilis) and sludge-feeding fly larvae are present. Nearly a mile downstream from the outfall, the stream seems to recover and some clean water organisms are again present. But, the stream at this point is still moderately enriched by nutrients from the sewage treatment plant, irrigation returns and grazing. Closer to Lake Helena, heavy sediments and warmer water temperatures continue to create problems for trout and associated aquatic life.

The cumulative effects of irrigation, grazing and the Helena Sewage Treatment Plant discharge have made lower Prickly Pear Creek suitable only for industrial and agricultural water uses. Consequently the stream classification in the state's water quality standards is the lowest classification possible (an E-F). At one time, lower Prickly Pear was probably a prime trout stream. Today it ranks as one of the poorest quality streams surveyed in southwestern Montana by the Water Quality Bureau.

Yet There is Hope...

The degradation experienced in lower Prickly Pear does not have to be permanent. Unlike upper Prickly Pear, the problems are mostly reversible, even though the solutions are still complex.

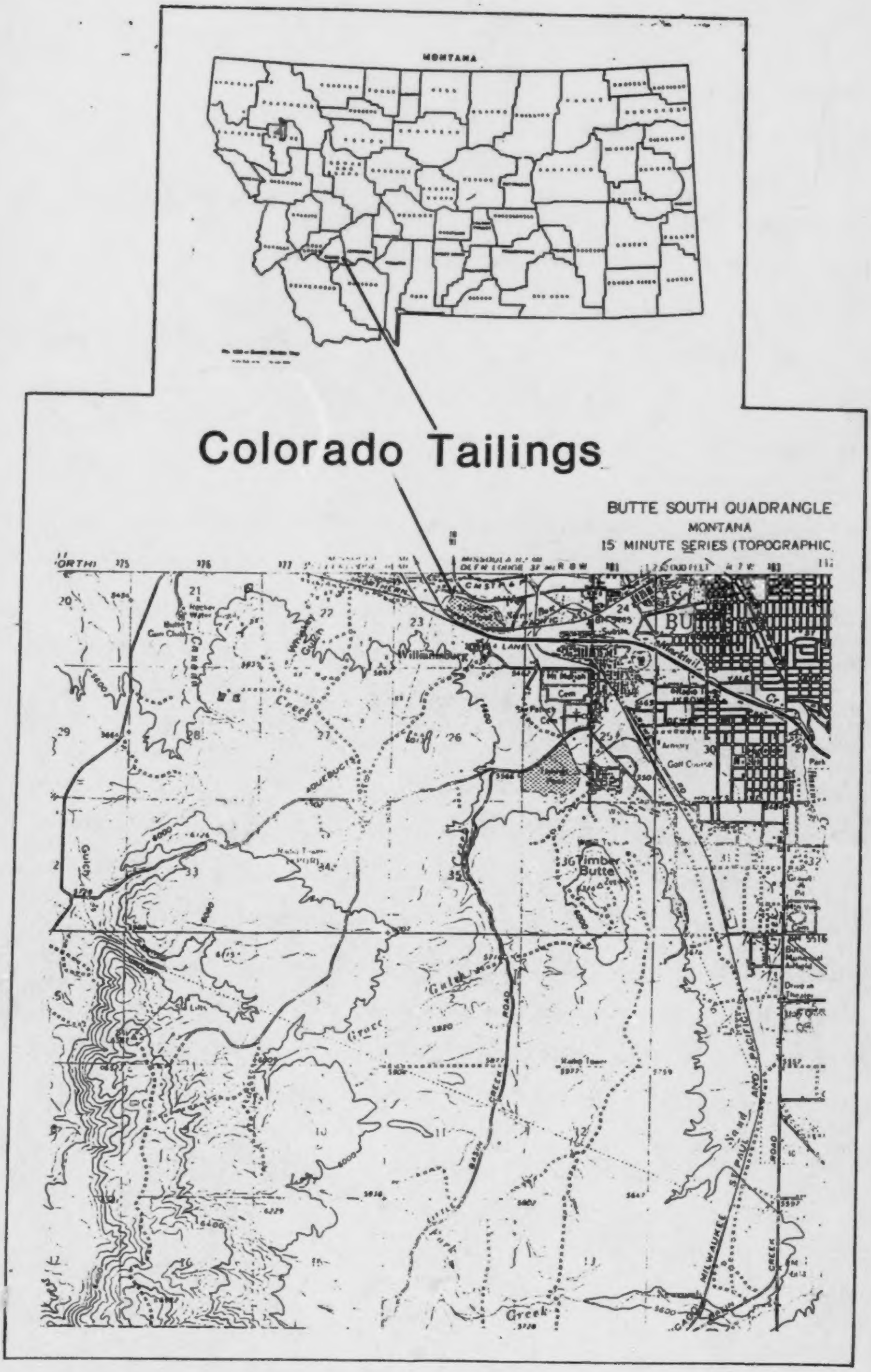
An effort to bring back the fishery would require a greater public understanding of the interrelationships that exist between man and water, and the life it supports. Better irrigation management and stream conservation practices by adjacent landowners are needed to keep water in the stream. Preservation and restoration of stream side vegetation is needed to prevent the stream banks from eroding. And finally, the exact effect nutrients in the Helena sewage have on the creek and on downstream reaches, and the benefits derived from their removal needs to be accurately determined so citizens of Helena can decide how to reduce the effects of the sewage treatment plant on the creek.

Whether lower Prickly Pear Creek warrants this kind of attention is difficult to answer. Since most of the lower creek is bordered by private land, and public access is limited, citizens of the Helena area may find the effort unjustified. But, before the decision is made, we should keep in mind that landownerships are not static and public needs change. As these changes, occur, lower Prickly Pear Creek may one day become a valuable recreational resource for Helena area residents. Even today, this potential exists. At the mouth of Prickly Pear, along the western and southern shores of Lake Helena, is one of the finest natural areas in the Helena area. It supports one of the few great blue heron rookeries in the area and a diversity of waterfowl. With the fishery in lower Prickly Pear Creek restored, Helena area residents could have a recreational treasure.

Like many streams in Montana though, the future quality of Prickly Pear Creek is an uncertainty. If any thing is for sure, it is that its future rests in our bands, the people that made it what it is today.

COLORADO TAILINGS

242,000 TONS


MONTANA
Colorado Tailings
BUTTE SOUTH QUADRANGLE
MONTANA
15' MINUTE SERIES (TOPOGRAPHIC
Williamsburg
Timber Butte
Creek
Gulch
Greek
Golf Course
Armory
MILWAUKEE
PACIFIC
ROAD

NORTHWEST FIELD OFFICE BRIEFING PAPER

Colorado Mill Tailiings
Silver Bow County   Butte, Montana

The Colorado tailings are located on the southwestern side of the city of Butte, Montana. The site displaced the original Silver Bow Creek Channel. The creek has been rerouted around the tailings. Both surface and ground water are passing over and through the tailings and discharging into Silver Bow Creek. As much as 75% of the toxic heavy metal load in Silver Bow Creek has been atributed to the Colorado tailings site.

The State of Montana maintains that human health and safety is threatened by this source of severe water degradation. They propose to remove the tailings and dispose of the material in an environmentally sound manner, stabilize the channel, and restore Silver Bow Creek to a viable water source and fishery. The tailings are proposed to be transported to an existing processing plant in Butte.

OSM made an investigation of the site, accompanied by Montana A.M.R. staff, as well as reviewed various file documents. In general, we found a lack of documentation with regard to negative impact upon domestic water supplies and whether the tailings did contribute 75% of the load in the creek. Since the site is located down drainage from the City of Butte, the potential for other sources of pollution is great. The State did not establish actual total benefits that a clean-up of the Colorado tailings would have on Silver Bow Creek.

The Northwest Field Office of OSM recommended that approval of the construction project request be deferred. However, additional investigatfon and planning for mitigation of the environmental quality aspects from the tailings, could be continued under the Administrative Grant. Correction of the problem could be made within the priority sequence as specified in P.L. 95-87.

Our recommendation concluded that the required demonstration for the need of protection of public health and safety as required in Section 409(c) of P.L. 95-87 was not established. Further, requirements of Section 408 (lein requirements) and other requirements of Section 409 (disposal requirements) were not satisfied.

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION

STATE OF MONTANA

(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

MEMO

TO: Office of Surface Mining, Mills, Wyoming

FROM: Montana Dept. of State Lands, Abandoned Mine Reclamation Bureau

RE: Response to Briefing Paper on Colorado Tailings

DATE: December 13, 1982

In reference to William Thomas' letter of September 7, 1982, stating the recommendations of the Northwest Field Office with regard to our non-coal projects.

OSM officials spent a few hours at this site and a cursory review of the documents on file at DSL was just as brief.

In OSM paper they state, ".... we found a lack of documentation with regard to negative impact upon domestic water supplies and whether the tailings did contribute 75 percent of the load in the creek." It has been clearly documented that cleanup of the Colorado Tailings will result in a 2/3 reduction of toxic metals to the creek. Reference - Dept. of Health memo dated 12/28/81, E.I.S. 'Proposed South Dump', Mt. DSL 10/81, Page II-13, Geohydrological Evaluation of Silver Bow Creek and its Flood Plain, Butte Mt. Area, February 1977, EPA 122-FO.02, Page 15.

Both OSM officials never contacted the EPA with regard to the Super Fund list. It is expected that the Colorado Tailings will be placed at the top of the Montana sites.

We have addressed the question of the lien situation. See legal memorandum, Dave Woodgerd dated 12/7/82.

Reference list - Colorado Tailings:

1- Interium Report - EPA - Rouse, Jim V., 1977

2- The cleanup of Silver Bow Creek, by John C. Spindler, Anaconda Company, 1977

3- Influence of Industrial, Municipal and Private Waste on Water Quality of a Portion of the Upper Clark Fork River Drainage; Frank E. Diebold, Mt. Dept. of Health, Mt. Tech, Anaconda Company

4- Mt. DSL/AMRB, Water Monitoring and Reclamation Construction Alternatives for Colorado Tailings - Draft - 11/5/82, Mt. Bureau of Mines and Geology Report

5- Dept. of Health memo dated 12/28/81 - Super Fund

6- WQB letter dated 6/23/82

7- City of Walkerville letter dated 2/26/81

8- Silver Bow County letter dated 2/4/81

9- Anaconda Company letter dated 12/15/81

10- EPA Report, Beverman & Gleason, Page 32, 1978

11- EPA letter dated 8/16/82

MH/sg

[illegible] Gary D.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TED SCHWINDEN, GOVERNOR
COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

June 23, 1982

RECEIVED
JUN 24 1982
STATE LANDS

Mr. Bill Thomas
State Director
Wyoming State Office
Office of Surface Mining
P.O. Box 1420
Mills, Wyoming 82644

Dear Mr. Thomas:

The purpose of this letter is to reiterate our concerns relating to reclamation of inactive problematic hardrock mine sites in Montana under the AML Program as per our telephone conversation of June 18.

In a 1978 Water Quality Bureau assessment, 131 mining-related water quality problems were found to be degrading up to 300 stream miles in Montana. The majority of these impacts clearly originated from inactive operations, particularly old placer and hardrock mines. Further, acid mine drainage and erosion of tailings constituted the most significant source of chemical stream pollution by mining activities in the state.

It is our strong belief that acid mine drainage and associated heavy metals in surface waters are a significant health hazard. In previous documentary information provided to your office through the Montana AML Program, we have tabulated some existing health hazards associated with inactive hardrock sites in Montana. These include, but are not limited to, heavy metal-contaminated domestic water supplies, game fish containing levels of mercury and other toxic metals in excess of FDA limits, and the potential for direct human poisoning through intake of metal-bearing waters. Livestock deaths attributed to consumption of mine-polluted surface waters have been documented. And in general, the tolerance of livestock to water pollutants exceeds that of humans.

Over the past several years, the Montana Department of Health and Environmental Sciences has worked closely with the Department of State Lands and AML staff to identify and document problems related to inactive coal and hardrock mine sites. We have strongly encouraged their efforts in seeking permanent solutions to the many historical problems over which we have little control.

Of five hardrock mine sites inventoried by the Montana AML Program and recently submitted to you for consideration (Grant No. AML-07), we feel that three are creating especially serious problems and should be reclaimed first, should prioritization become necessary. These sites are, in order of the priority we would apply: 1) The Alta Mine, 2) Bannack tailings, and 3) the McLaren tailings. Our rationale for supporting reclamation at the Alta and the McLaren has been addressed in previous letters to the Department of State Lands. Copies of these letters have been enclosed for your information. The Bannack tailings warrant your attention because of EPA's discovery in 1970 that fish in Grasshopper Creek and the Beaverhead River downstream of the tailings contained mercury levels up to three times higher than FDA-recommended limits.

In addition to the other rationale, three of the five proposed projects-- Alta, Bannack, and Colorado -- would significantly improve water quality in three of the Water Quality Bureau's priority stream segments.

We are attaching further information on the Bannack tailings, Colorado tailings, and the Elkhorn Mill for your review.

In closing, we strongly encourage your approval of requests for reclamation funding of nuisance inactive hardrock mine sites in Montana under the AML Program. As we have explained, surface and groundwaters polluted by inactive mine wastes poses a very real human health hazard. The AML Program may offer the only solution to the problem.

Very truly yours,

Steven L. Pilcher, Chief
Water Quality Bureau
Environmental Sciences Division

SLP:yf
Enclosures

cc: James R. Harris (w/attachments)
Director
Office of Surface Mining

Richard Juntunen
Reclamation Division
Department of State Lands

Supplementary Information -- AML Hardrock Sites (AML-07)

Bannack Tailings – The Gold Leaf Mill tailings and others near Bannack, Montana have been a historic source of heavy metals and sediment in Grasshopper Creek and, further downstream, in the Beaverhead River. A 1970 study conducted by EPA showed fish flesh samples taken from the aforementioned waters to contain levels of mercury as high as three times the FDA-recommended tolerance limits. A clear correlation was shown between the tailings and the elevated fish mercury levels.

A cooperative effort undertaken in 1976 by the local conservation district and the Montana Dept. of Fish, Wildlife and Parks has reduced the pollution sources to a degree. Riprap was installed to stabilize streambanks in the vicinity of the Gold Leaf tailings and an overflow channel constructed to divert surface runoff.

Other tailings upstream of the project area continue to erode and contribute pollutants to the creek and river. Reclamation efforts similar to those described above are highly desirable. However, removal of these tailings and those at the Gold Leaf Mill would offer a more permanent solution to the problem.

Colorado Tailings – It has been estimated that approximately 1.7 million cubic meters of old mine tailings are deposited along Silver Bow Creek, the result of early mining and milling operations in the Butte area. Surface and groundwater contaminated by the tailings enter Silver Bow Creek and are a major factor in its high metal content. Because of this percolation, removal of the tailings along the creek may be the best method of reclamation. One author has estimated that, left to nature, it will take in excess of 350 years for the metals to leach out.

Of the 1.7 million cubic meters of tailings, the largest single concentration (213,000 m^3) is in the Colorado tailings area. Reclamation efforts here would, according to EPA, reduce Silver Bow Creek metals levels by as much as two thirds. In addition, the Colorado tailings area would provide the best test site to monitor for the effects of tailings removal because of its location near the headwaters of the stream. A 1980 cost estimate was $4.60/$m^3$ or about $1 million dollars.

Elkhorn Mill – The small amount of available data shows that this site discharges acid and metals to Elkhorn Creek, a tributary to Wise River and in turn, the Big Hole River. The downstream extent and degree of impact on these waterways has not been throughly investigated.

Office Memorandum • STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TO : Tim Gallagher, Governor's Office **DATE:** December 28, 1981

FROM : Don Willems, Dept. of Health & Environmental Sciences

SUBJECT: Nomination of Sites Under Superfund

The following list constitutes the seven sites mentioned in the December 28, 1981 draft letter prepared for Governor Schwinden to send to Steve Durham. The first three are those for which we feel we have fairly adequate site data for listing. The last four are those which require additional substantiating information.

The second column indicates persons or companies which should be notified of the state's action prior to our submission of the site names to the EPA. Please let me know whether you wish our department to make these contacts or whether your office wishes to do so. I will be happy to answer any questions you may have in this regard.

SITE NAME/LOCATION	CONTACT
1. Anaconda Reduction Works, Anaconda	Anaconda Copper Company
2. Anaconda Refinery, Great Falls	Anaconda Copper Company
3. Rocky Mountain Phosphate Co., Garrison	John Alexander, attorney for present owners
4. Libby Area Groundwater, Libby	St. Regis Paper Company
5. Milltown Area Groundwater, Milltown	Champion Building Products
6. Silver Bow Creek Contamination, Butte - Anaconda	Anaconda Copper Company and Stauffer Chemical Company
7. Evergreen Area Groundwater, Kalispell	Plum Creek Lumber Company

cc: Ken Alkema

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

December 29, 1981

Mr. Steven Durham, Administrator
Region VIII, EPA
1860 Lincoln Street
Denver, CO 82095

Dear Mr. Durham:

Pursuant to your November 27, 1981 letter to Mr. Donald Willems of the Department of Health and Environmental Sciences, Montana at this time wishes to submit seven hazardous waste-impacted sites as potential candidates for remedial action under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. The Department of Health and Environmental Sciences has developed this list of sites after careful review, with your Montana Office staff, of all uncontrolled and abandoned hazardous waste sites known to exist in the state. We feel confident that three of these sites merit priority on the list of sites required under the National Contingency Plan and are presently seeking further data on the four additional sites. The Department of Health and Environmental Sciences will submit to you by February 1, 1982 the names of the seven Montana sites and a summary of any information gaps critical to proper evaluation of the sites via use of the MITRE model.

Don Willems and the staff of the Solid Waste Management Bureau will work closely with the EPA Montana Office in this effort. Please contact Mr. Willems with any questions you may have.

Sincerely,

TED SCHWINDEN
Governor

cc: Dr. Drynan
Max Dodson

Silver Bow Creek

Silver Bow Creek from the confluence of Copper Creek in Butte to the Warm Springs Ponds, northeast of Anaconda, Montana, has been the recipient of industrial, agricultural, municipal and private waste for over 100 years. Numerous studies by local, State, and Federal agencies have been made to identify and seek solutions for the multiple sources of pollution to the creek. Some progress has been achieved in the treatment of industrial and municipal wastes in order to mitigate impacts to the creek and more importantly, the impacts of the creek itself on the upper Clark Fork River into which it drains. However, recent investigations have indicated that the presence of contaminants, such as heavy metals and elemental phosphate, continues to pose a threat to health as well as the aquatic environment of the creek itself.

The Montana Department of Health and Environmental Sciences and EPA Montana Office are currently evaluating existing information to develope a comprehensive plan to assess the multiple sources of contamination impacting the creek. Based on the results of this evaluation, the suitability of the site as a candidate for the National Contingency Plan list of priority hazardous waste sites will be determined. At the present time, it appears this may be the best mechanism to provide for a complete investigation and any possible remedial efforts.

CITY OF WALKERVILLE
OFFICE OF
MAYOR AND CITY CLERK

WALKERVILLE, MONTANA 59701

2/26/81

To: Mr. Juntunen
Dept. of State Lands
Capitol Station
Helena, Montana 59601

From: Donald H. Brunell, Mayor

Re: Reclaiming "Abandoned" Mined Land

The Walkerville City Council at their regular meeting held on February 11, 1981, went on record as approving the project of Melvyn Rowling and Henry McClernan for re-claiming lands especially in Walkerville.

The lands proposed to be reclaimed have been a public nuisance and an eye sore for a great number of years. A small city's budget cannot take care of projects of this magnitude.

We would greatly appreciate any assistance you could give in helping solve our problems many of which have existed in our community for 80 some years.

Thank you.

Sincerely,

Donald H. Brunell

BUTTE-SILVER BOW
OFFICE OF CHIEF EXECUTIVE
COURTHOUSE
BUTTE, MONTANA 59701

AREA CODE 406
PHONE 792-5950

February 4, 1981

Mr. Richard Juntunen
Reclamation Division
Department of State Lands
1625 11th Avenue
Helena, Montana 59620

Dear Mr. Juntunen:

Pursuant to meetings held between your office and Henry McClernan and Mel Rowling representing a group of concerned citizens from the Butte area, please accept this letter as my endorsement of Mr. McClernan and Mr. Rowling's proposal for reclamation of mining areas in the Butte-Silver Bow area. We are very grateful for the efforts that Mr. McClernan and Mr. Rowling are expending on the Butte proposal.

Butte has long been plagued by unsightly and unsafe conditions that have resulted from various mining operations. The reclamation of these areas would be a significant benefit to the entire community. I have reviewed at length the proposal made for the areas identified for reclamation and have visually observed a majority of these sites. I am convinced that reclamation of these areas would be the most significant effort ever undertaken to improve the physical appearance of the community. The reclamation would remove unsightly conditions, eliminate unsafe surroundings and would substantially correct many of the drainage and erosion problems this community faces.

The Butte-Silver Bow Government whole heartedly supports the efforts of Henry McClernan and Mel Rowling and would ask for your most serious consideration of their proposal. If the Butte-Silver Bow local Government can be of assistance in this matter, please feel free to call upon us.

Sincerely,

Donald R Peoples

Donald R. Peoples
Chief Executive
Butte-Silver Bow Government

DRP:jvd
cc: Henry McClernan
Mel Rowling

ANACONDA Copper Company
Legal Department
P. O. Box 689
Butte, Montana 59701
Telephone 406-723-4311

December 15, 1981

Mr. Bob Mundie
AML Program
Reclamation Division
State Lands Department
1625 Eleventh Avenue
Helena, Montana 59620

RECEIVED
DEC 17 1981
STATE LANDS

Dear Mr. Mundie:

Anaconda Copper Company is pleased to cooperate with State Lands in an effort to identify possible reclamation work in the area of the Colorado tailings in Butte.

Enclosed is Anaconda's revised consent for right of entry. As you indicated in your letter requesting consent further agreement from Anaconda will be required if you determine these lands appropriate for actual reclamation work. The Anaconda representative during your inspection or other reclamation activity is Bob Riley, Manager - Health, Safety & Environment.

If you have any questions or concerns, please contact me or Bob Riley.

Very truly yours,

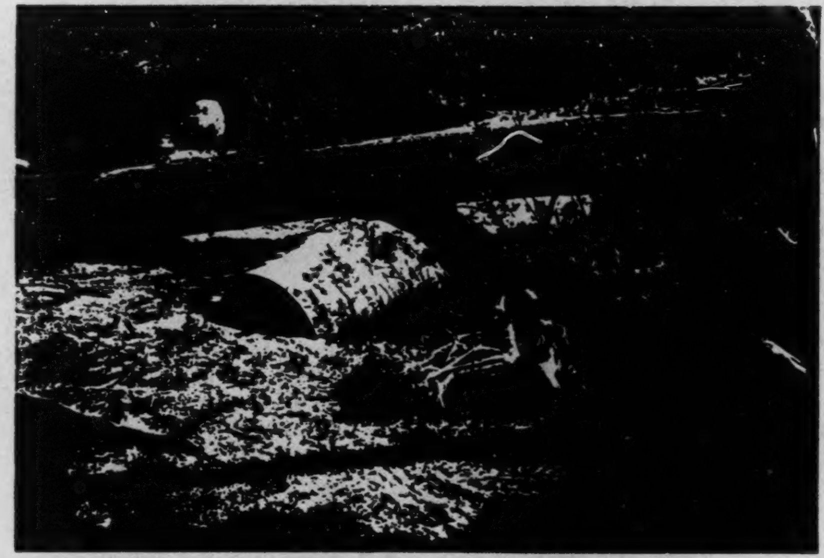
William P Mufich
WILLIAM P. MUFICH
Senior Attorney

WPM/je
cc: G. W. Thompson
J. F. Gardner
R. E. Riley (w/encl.)

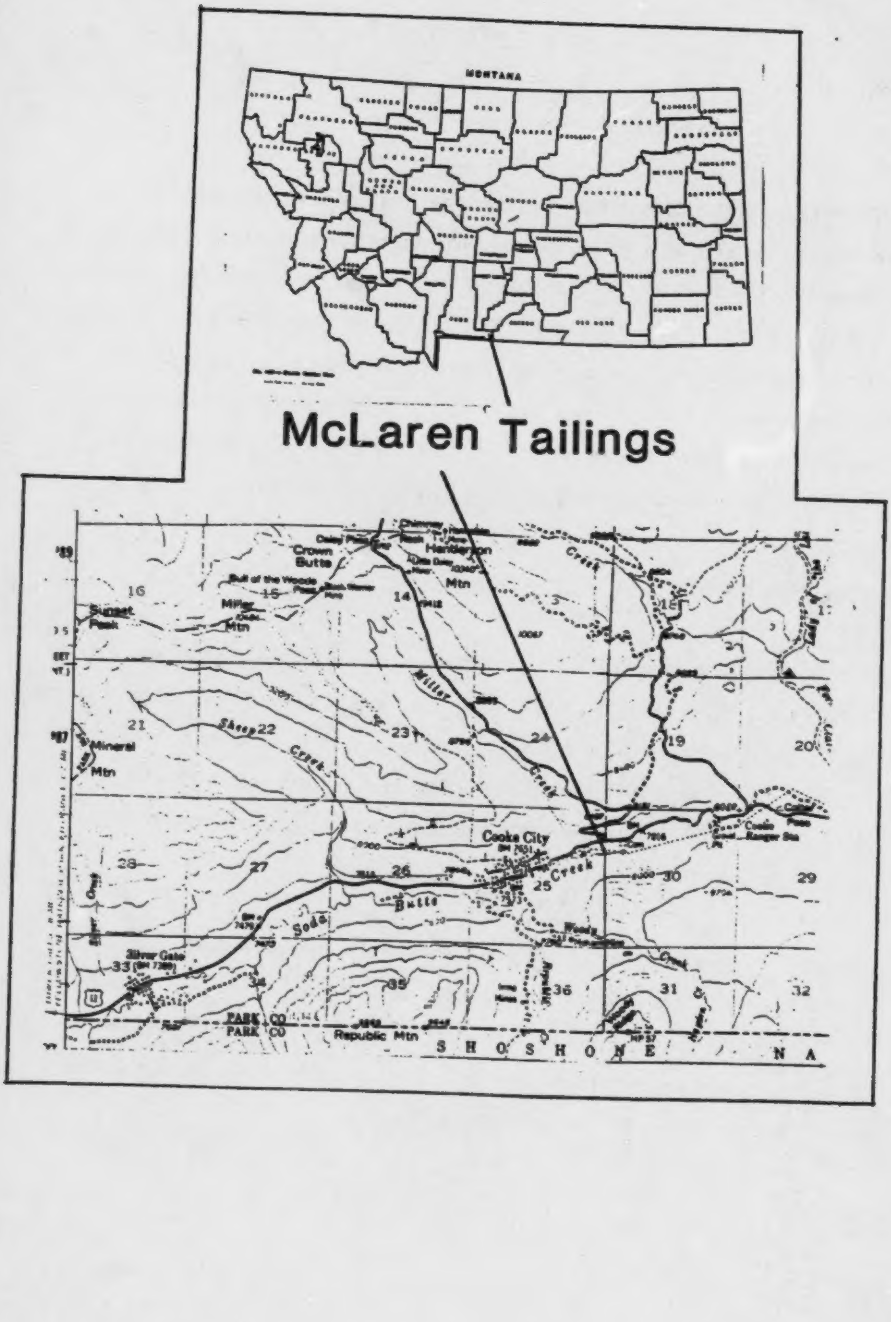
D44/N15

ANACONDA Copper Company Division of The ANACONDA Company

McLAREN TAILINGS



250,000 TONS



McLaren Tailings

NORTHWEST FIELD OFFICE BRIEFING PAPER

McLaren Mill Site

Park County   Cooke City, Montana

The McLaren Mill site contains tailings from past gold and silver mine processing. The site is located in Soda Butte Creek, immediately upstream from Cooke City. Acid water is discharging from the area of an old culvert placed through the tailings. The culvert was placed in an attempt to limit upstream water movement through the tailings area and thus reduce contact with acid forming materials. The culvert has failed. The Soda Butte Creek has been rerouted around, but immediately adjacent to the tailings. The resultant water quality from contact with the old tailings is attributing to degradation of the downstream biota. Such impact is believed to affect up to 15 miles of downstream drainage.

The State of Montana maintains that a serious threat to public the health and safety and environmental quality has resulted at this site. They propose to remove the tailings and dispose of it in an environmentally sound manner, stabilize the channel, and restore the creek. This would be done in cooperation with a mineral company who would extract economic amounts of gold and silver from the tailings during the removal process.

OSM made an investigation of the site, accompanied by Montana A.M.R. staff. Critical information obtained included the following:

- -Cooke City water supply is from natural springs and is currently being expanded to handle future demands. There is no relience on Soda Butte Creek for a domestic water supply by the city.

-A long time resident stated that he was not aware of any private wells or water supplies being contaminated by Soda Butte Creek. He also mentioned that he suspected contamination was being introduced into Soda Butte Creek by other downstream tributaries.

-Past studies focused on impact to biota with no substantial findings presented which related directly to public health and safety with regard to demands of water use.

From the site visit, review of the files, information included on the application, and subsequent information made available, the Northwest Field Office of OSM recommended the approval of the construction project request be deferred. Additional investigation and planning for mitigation of environmental quality aspects resulting from the tailings should be continued under the Administrative Grant. Correction of the problem could be made within the priority sequence as specified in P.L. 95-87. This recommendation was based on the following:

-Required demonstraton for the need of protection of public health and safety as required in Section 409(c) of P.L. 95-87 was not established.

-The method of disposal of the mine waste piles being reworked did not meet criteria of Section 409 of P.L. 95-87.

-The lein requirements of Section 408 of P.L. 95-87 were not satisfied.

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION
STATE OF MONTANA
(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION
1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

MEMO

TO: Office of Surface Mining, Mills, Wyoming

FROM: Montana Department of State Lands, Abandoned Mine Reclamation Bureau

RE: Response to Briefing Paper on McLaren

DATE: December 13, 1982

In reference to William Thomas' letter of September 7, 1982, stating the recommendations of the Northwest Field Office with regard to our non-coal projects:

The two OSM officials were onsite for only a few hours and quoted 'one' resident of Cooke City in their briefing paper. Their cursory review of the DSL files on McLaren were as brief as their site visit.

OSM states, "There is no reliance on Soda Butte Creek for a domestic water supply by the city." Reference has been made in the reports that addresses the concerns on possible contamination of groundwater and downstream users (i.e., in Yellowstone Park).

We have addressed the question of liens. See legal memorandum from Dave Woodgerd dated December 7, 1982.

The following references all address the problems with the McLaren Tailings:

1- WQB letter dated 12/10/80

2- NPS letter dated 5/9/80

3- USFS letter dated 9/26/80

4- American Fisheries Society 9/16/82

5- USFS letter of 10/04/82

6- Study #WE-5201-007, Mt. Dept. of Natural Resources & Fish and Game

7- Annual Report, Acid Mine Drainage Control Feasibility Study, Cooke City, MT., for the EPA, MT. DNRC and MT. Bureau of Mines & Geology - July 1974 - April 1975, Grant #S-802671

8- Mine Drainage Control from Metal Mines in a Subalpine Environment - A Feasibility Study., Mt. DNRC & U.S. EPA, EPA 600 2.77.224, November 1977

9- EPA letter dated 8/16/82

MH/sg

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
WATER QUALITY BUREAU

THOMAS L. JUDGE, GOVERNOR
COGSWELL BUILDING
ROOM A206
STATE OF MONTANA
(406) 449-2406
HELENA, MONTANA 59601

December 10, 1980

Mr. Leo Berry, Jr., Commissioner
Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Berry:

We are providing this review of the mill-related water pollution situation in Soda Butte Creek to assist your agency in justifying reclamation expenditures at the abandoned McLaren Mill site near Cooke City, Montana.

From 1967 to 1980, numerous surveys were performed to determine if Soda Butte Creek was being polluted by drainage originating at the old McLaren Mill. All investigators have reported basically the same thing: The stream's chemical quality is very poor and the community of stream-dwelling organisms is impaired severely. Considerable downstream distance is required for recovery, which is primarily a result of dilution by incoming tributaries. Rehabilitation was attempted by Kennecott Copper Corporation in 1969, but water quality sampling about a year after completion of the work showed little, if any improvement. A detailed reclamation study conducted from 1973 to 1975 concluded that water pollution abatement was feasible.

The following summary of Soda Butte Creek water quality describes the seriousness of the water pollution problem.

Soda Butte Creek above the tailings discharge can be described as a calcium-bicarbonate water with a neutral pH and low dissolved solids. The stream is cold and well-oxygenated. Metals concentrations are generally low, except for copper. Occasionally high levels of copper may reflect local geology, but they most likely represent the residual effects of historic mining activities in this stream reach. Nevertheless, this reach has been demonstrated to be biologically healthy. The water has low to moderate alkalinity, which offers some buffering capacity against acid pollutants. But the water's relatively low hardness does not afford aquatic organisms a great deal of protection from potentially toxic heavy metals. In summary, the stream naturally contains good to excellent quality water and is biologically healthy but susceptible to mining and milling-related pollutants.

On the other hand, the tailings discharge is grossly polluted. The discharge is an acidic, high sulfate water, laden with heavy metals. Iron, zinc, copper, lead, and possibly others occur in concentrations many times greater than those known to be toxic to freshwater aquatic life. Drinking water criteria are exceeded by manganese, iron, lead, cyanide, and pH.

Soda Butte Creek receives approximately 100 gallons per minute of this poor quality water. Instream, lead has been shown to exceed the criterion for freshwater life by at least 1.5 times. Copper has exceeded its criterion by at least 25 times. Cyanide also may be present at toxic levels, but data for this element are incomplete. Iron, as is frequently the case in nature and with mine drainage, occurs in concentrations many times higher than those of any other metal and stains the water and streambed a rusty red color. Iron precipitates have a toxic and suffocating effect on stream organisms. One investigator showed a complete inhibition of primary production (photosynthesis) in Soda Butte Creek immediately below the tailings discharge as a result of iron (ferric hydroxide) deposits acting as a physical barrier against algal colonization. Other studies have demonstrated reduced populations of fishfood organisms and the absence of fish.

Problematic copper, lead, and iron concentrations remain in Soda Butte Creek as it flows into Yellowstone National Park nine miles downstream, despite dilution by several tributaries. The actual point of complete recovery is unknown; the metals and metal-bearing sediments originating at the McLaren Mill may chronically impair biological functions for many stream miles within the Park.

With the close proximity to Yellowstone Park, its location in a headwater drainage, a feasibility study already in hand, and a high degree of interest in reclamation, it seems to us that the McLaren Mill tailings should be a high priority for AML funding. We encourage your efforts at rehabilitation of the area, especially as it relates to water pollution abatement in Soda Butte Creek. Please contact Gary Ingman of our staff if you need more detailed documentation of the problem or technical assistance relating to data interpretation and water quality sampling. Please keep us informed of your progress on this project.

Sincerely,

Steven L. Pilcher, Chief
Water Quality Bureau

SLP/bb

by [illegible]

United States Department of the Interior
NATIONAL PARK SERVICE
YELLOWSTONE NATIONAL PARK
WYOMING 82190

IN REPLY REFER TO:
N3617 (YELL)

MAY 9 1980

MAY 12 1980

Mr. Richard Juntunen
State of Montana
Department of State Lands
1625 Eleventh Street
Helena, Montana 59601

Dear Mr. Juntunen:

I was pleased to learn from our Resource Management Specialist, Norman A. Bishop, that you are actively working on abating the pollution by iron from the McLaren Mill tailings of Soda Butte Creek at Cooke City.

Mr. Bishop tells me that you met for the second time Friday, May 2, with Mr. Mel Alter, Intercontinental Development Corporation (INDECO), at your office. I understand that INDECO is negotiating to purchase the mill site from Bear Creek Mining Company, with the intent to reprocess the tailings, and that you have discussed your interest in supporting the reclamation-pollution abatement aspects of INDECO's work there. Further, if INDECO decides not to purchase the site and process the tailings, I understand that it is your interest to seek funding through the Office of Surface Mining Abandoned Mines Lands Program to stop the pollution of Soda Butte Creek.

Abatement of the pollution of Soda Butte Creek is high on Yellowstone National Park's resource management priorities. Our files show that we have been seeking, at least since 1967, to remove that source of pollution to Soda Butte Creek.

The toxic iron pollution of Soda Butte Creek constitutes a hazard to the well-being of the communities of Cooke City and Silver Gate, kills fish and aquatic life down to the park boundary and degrades the quality of the otherwise pristine stream that is an important recreational fishery. The lack of fishing at Cooke City places a higher demand for recreation fishing on the portion of Soda Butte Creek within the park.

Please keep me informed on your work on Soda Butte Creek. I am vitally concerned and want to support your efforts in every appropriate way.

Sincerely,

ACTING Superintendent

cc: Mr. Mel Alter,
Intercontinental Development Corp.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Custer National Forest
Box 2556
Billings, MT 59103

2300
SEP 28 '77

Mr. Leo Berry, Commissioner
Montana Department of State Lands
1625 Eleventh Avenue
Helena, MT 59601

Dear Leo:

In a recent talk with Bill Christiansen, Staff Coordinator, Montana Energy Office, we had occasion to discuss abandoned mining areas in Montana that might be reclaimed under the provisions of the so-called "orphan" lands section of the 1977 Surface Mining Control and Reclamation Act. Bill suggested that we contact you.

As you or some of your folks may recall, Leo, there are three such areas near Cooke City, Montana: the McLaren mine, the Glengary mine, and a tailing pile at the McLaren mill site, which, we feel, should have high priority for reclamation, if the resources to do it ever became available. The two mines are in an alpine environment. Under these severe climatic conditions, essentially no natural revegetation has taken place since their abandonment. It has been estimated that without reclamation it may take 300 to 1,000 years for the native alpine turf to become reestablished. Besides being unsightly, these disturbed areas are a constant source of sediment. Acid drainage containing toxic levels of metals is degrading streams below all three sites. Drainage from the Glengary mine flows into a tributary of the Clark's Fork of the Yellowstone River; the McLaren mine pollutes the Stillwater River, which flows through the proposed Beartooth Wilderness; and drainage from the McLaren mill tailings pile seeps into Soda Butte Creek, which flows into Yellowstone National Park and contributes water to the Yellowstone River. Aquatic life in these streams has been destroyed or substantially reduced for several miles below each site. A coating of iron oxide covers the stream bottoms downstream of the two mines.

These sites have been extensively studied, and plans and techniques for their reclamation have been developed. Under an EPA grant, the

McLaren mine, the Glengary mine, and the McLaren mill tailing pile were the subjects of a mine drainage control feasibility study from July 1973 through September 1975. This study, carried out by the Montana Department of Natural Resources and Conservation, the Montana Bureau of Mines and Geology, and the Montana Department of Fish and Game, in cooperation with the Custer and Gallatin National Forests, the Forest Service Intermountain Forest and Range Experiment Station, and the mining companies and private landholders in the area, examined the acid and toxic metal drainage from three sites, its causes, and the feasibility of curtailing the drainage and rehabilitating these areas. The existing degraded biological conditions of streams affected by this drainage and the extent of reclamation necessary to restore viable fisheries to these streams were determined. A study of high elevation revegetation techniques was begun in the summer of 1974 at the McLaren mine site by the Forest Service Intermountain Experiment Station. A two-acre demonstration plot was established on the mine in 1976. The conclusion from these studies is that reclamation at all three sites is both feasible and desirable.

Enclosed are some excerpts from the feasibility study final report describing present conditions and the recommended reclamation procedures at each site, and a summary of Forest Service alpine revegetation reserved at the McLaren mine site. Reclamation of the McLaren mine would involve burying some high sulfide materials, re-contouring about 20 acres of surface area, and reestablishing native vegetation. Lime, fertilizer, and mulch would be required for successful revegetation. The present drainage pattern would be modified to route water around the site and lessen the infiltration of water into the acid-producing spoils material. At the Glengary mine, the mine portal and two raises would be sealed, and the disturbed areas above and below the mine, about 7.5 acres, would be regraded and revegetated as at the McLaren mine. Revegetation at the McLaren mill site, which is lower in elevation, will not be a major problem. Reclamation work here would be a hydrologic modification of the site so that water does not flow through the acid-producing tailings material and on into the streams as it now does.

Besides the obvious benefits from restoring the surface environment at the mine sites, these reclamation efforts are expected to reduce the acid and metal loads to the streams by about 90 percent. This would allow the biological recovery of the streams. The estimated costs of this reclamation work are $292,000 at the McLaren mine; $114,000 at the Glengary mine; and $157,000 at the McLaren mill site, or a total of $563,000 for the whole composite.

Because of the high scenic, recreational, and environmental values of the impacted areas, and because they have been thoroughly studied and reclamation plans have already been developed, we suggest these sites should be given a high priority for reclamation under the new Surface Mine Reclamation Act.

In the event that the projects were reviewed favorably, implementation would require working closely with the landholders and companies involved. But as the dialogue and communication process have involved them for some time now, we see no major problem if we continue in the same vein.

We would be interested in your response to this proposal and most happy to be of any further aid you might require.

Sincerely,

Dan MacIntyre

D. C. MacINTYRE
Forest Supervisor

Enclosures

american fisheries society
MONTANA CHAPTER

Fort Missoula
Missoula, Montana 59801
September 16, 1982

RECEIVED
SEP 22 1982
STATE LANDS

Mr. Richard Juntunen, Chief
Abandoned Mine Reclamation Bureau
Montana Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59620

Dear Mr. Juntunen:

The Montana Chapter of the American Fisheries Society recently reviewed the acid mine drainage problems associated with Soda Butte, Fisher Creek and the head of the Stillwater River near Cooke City. These old tailings and mine deposits are not only unsightly to the aesthetics of the Beartooth mountain range, but have been shown to eliminate resident populations of salmonids in the immediate influence of the tailings and for some distance downstream. Where low density fish populations have been able to survive the diluted toxicity, they have been found to contain elevated concentrations of heavy metals.

These old sites are in need of reclamation efforts for aesthetics, recreational and public health reasons. Considerable studies have been conducted which all show the detrimental effects to the fishery and aquatic ecology. We are concerned that human consumption of the existing trout could pose a threat to human safety. Little has been learned on the antagonistic reactions of the various heavy metals involved in these polluted stream environments.

We urge your pursuance of Abandoned Mine Reclamation Funds to assist with reclamation efforts and remove the threat to human health in this beautiful mountain area.

Sincerely,

Greg Munther

Greg Munther, President
Montana Chapter AFS

GM eb

Reclamation

United States Department of Agriculture
Forest Service
Gallatin NF
P.O. Box 130
Bozeman, MT 59715

Reply to: 2810 Mining Claims

Date: OCT 04 1982

Subject: McClaren Milliste Tailings

To: Gareth Moon
Department of State Lands
Helena, MT 59601

RECEIVED
OCT 05 1982
STATE LANDS

As you are aware, the Department of State Lands and the Gallatin National Forest have been working with Astra Corporation of Spokane, Washington on their proposal to reclaim the McClaren tailings immediately east of Cooke City.

Although most of the impacted lands are privately owned, it appears that some lands managed by the Forest Service would be involved.

The degradation of the groundwater and of Soda Butte Creek caused by the tailings has eliminated the fisheries and presents a potential hazard to downstream users from campground and private wells.

We think this is a very worthwhile project and could alleviate many of the concerns that we share with the Park Service. I hope we can continue to work with your department to support this project.

JOHN T. DRAKE
Forest Supervisor

cc: Ben Mundy, DSL
D-3

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
WASHINGTON, D. C. 20240

APPLICATION INSTRUCTIONS
FOR AML GRANTS OR
COOPERATIVE AGREEMENTS

ACTION TRANSMITTAL DOI-OSM-MB-80-1

MAY 1 8 1982

TO: STATE AGENCIES OR INDIAN TRIBES ADMINISTERING THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87).

FROM: Director, Office of Surface Mining

SUBJECT: Instructions for Applying for Federal Assistance for the Following Abandoned Mine Lands Programs

(A) FEDERAL RECLAMATION PROGRAM.
(B) STATE OR INDIAN RECLAMATION PROGRAM.

This Action Transmittal contains instructions for the five parts of an application to be submitted when applying for an AML non-construction or construction grant or cooperative agreement. These parts are:

Part I - Contains preparation instructions for the Application for Federal Assistance, SF-424.

Part II-A - Contains preparation instructions for Section A of the Project Approval Information, Form OSM 50-A.

Part II-B - Contains preparation instructions for Section B of the Project Approval Information, Form OSM 50-B.

Part II-C - Contains preparation instructions for submitting an Environmental Assessment Statement.

Part III-A - Contains preparation instructions for the OSM Budget Information Report, OSM-47.

Part III-B - Contains preparation instructions for the Budget Information Construction Report, OSM-48.

Part IV - Contains guidelines for preparing the Program Narrative Statement, Form OSM-51 which accompanies the OSM Budget Information Report, OSM-47 and the Budget Information Construction Report, OSM-48.

Part V-A - Contains a List of Assurances that an applicant will submit when applying for an AML non-construction grant or cooperative agreement.

Part V-B - Contains a List of Assurances that an applicant will submit when applying for an AML construction grant or cooperative agreement.

EFFECTIVE DATE. July 1, 1982

ACTION REQUIRED. Submit the application, project approval information, budget form, program narrative statement, and assurances to OSM in the format explained in this Action Transmittal.

SUBMITTAL PROCEDURES. The original and four hand signed copies of the Application for Federal Assistance, SF-424, will be forwarded to the OSM State Office Director. The supporting project approval information, budget forms with schedules, program narrative statement and assurances will be attached to the original and each copy of the Application for Federal Assistance, SF-424.

REQUISITIONING OF FORMS. Requests for additional forms should be sent to the respective OSM State Office Directors.

INQUIRES TO. OSM State Office Directors.

DEPARTMENT OF STATE LANDS

TED SCHWINDEN GOVERNOR

STATE OF MONTANA

CAPITOL STATION

(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

May 22, 1981

Secretary of the Interior James Watt
U.S. Department of the Interior
18th & C Streets, NW
Washington, DC 20240

ATTN: Steve Shipley

RE: Grant approval procedures for the Montana Abandoned Mine Land (AML) Program

Dear Mr. Watt:

I am writing concerning problems this agency has had obtaining grants under an approved state AML program.

The Montana AML reclamation program has been approved since October 15, 1980, and the Department of State Lands has been working diligently to obtain funds for various AML reclamation projects ince that time.

Montana's first AML grant application, which totalled $13,780,634 was submitted to OSM on October 16, 1980 and included all phases of various AML reclamation projects in the state. This grant application was rejected and the Department was told to resubmit a grant to cover National Environmental Policy Act functions and all activities up to but not including engineering design work before we could submit another grant application for the actual construction. We were told this despite the fact that Title IV, Sec. 405(f) of PL 95-87 says that states with an approved AML program only must submit an application on an annual basis.

In accordance with OSM policy an AML grant application was resubmitted by Montana on January 15, 1981 for $273,926 to cover all work up to engineering for various AML site reclamation.

On February 20, 1981 the Department of State Lands received a letter from OSM's Denver regional offices which indicated that our grant application was okay and was being forwarded to Washington D.C. headquarters for approval.

After the February letter we hoped to receive our funds quickly but at that time the Washington headquarters had changed requirements for grant applications pursuant to a set of November 21, 1980 guidelines. At this point headquarters and the regional OSM offices accused each other of mistakes. Meanwhile, our grant application was again held up.

AN EQUAL OPPORTUNITY EMPLOYER

We sincerely believe that OSM headquarters is placing unnecessary red tape requirements on our AML grant application procedures such that the grant process is extremely cumbersom. To date we have not received funds necessary to carry out this years' field work.

I note that Congress is questioning why the AML funds are not being spent and was told that the states were not gearing up for the AML program or requesting funds. In our case we have been trying for eight months to obtain AML funds under an approved program with no results because of OSM's procedures and what appears to be bureaucratic fumbling. We are now worried that our funds may be returned to the Department of Interior under the three year limit clause of Sec. 402(g)(2)(iv) whereby state funds must be expended within three years after their allocation or they revert to the Secretary of Interior.

We request your assistance to streamline the OSM AML program granting procedure so that the states can truly obtain "exclusive responsibility and authority to implement the provisions of the approved program" as is envisioned in Sec. 405(d) of PL 95-87 Title IV. Without quicker turn around in obtaining our funds Montana's AML program will continue to be hamstrung.

Sincerely,

Gareth C. Moon, Commissioner
Department of State Lands

GCM/DJ/gln

May 4 – letter sent to Acting Director Andrew Bailey; "briefing paper" telefaxed to Washington by region.

Month of May – numerous phone calls to Region and Washington on status of grant.

5/21/81 Phone call by Dick Juntunen to Beasley's secretary moves "briefing paper" from Beasley's desk to Bailey's desk to undersecretary for sign.

signed – 6/19/81 By Deputy Regional Director

6/25/81 signed grant sent to State

6/29/81 " " received by State

To date we have not received the letter of credit ([illegible] and file (Annual Grant.) (

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

JUN 4 1981

Mr. Richard Juntunen
Program Manager
Montana Abandoned Mine Lands
  Reclamation Division
Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59620

Dear Mr. Juntunen:

I am in receipt of your letter dated May 4, 1981, concerning the Interstate Mining Compact Commission's petition regarding an extension for State expenditure of abandoned mine land funds, and problems associated with the grant approval process.

The delays in processing Montana's grant application are a result of misinformation and inadequate assistance provided to you and your staff by Region V personnel.

General procedures for the approval of AML grants, based on OSM regulations and OMB Circular A-102 requirements, have been in existence since the inception of AML and approved detailed procedures were provided to all Regions November 21, 1980.

Grants are to be approved at the Regional level and Briefing Papers submitted to Headquarters after complete acceptable applications have been received by the Regions. Briefing Papers are approved by the Assistant Secretary for Energy and Minerals for grant requests over $100,000 and the President of the United States is informed of approvals over one million dollars. The Regional Director must obtain authorized signatures for grant agreements and submit the approved agreements to Headquarters for preparation of letters-of-credit by the Division of Budget and Financial Management.

A grant application for the State of Montana was received on February 24, 1981. Region V was notified of incomplete information submitted for the State on March 2, 1981. A follow-up memorandum was sent to the Region on March 11, 1981, indicating the problems associated with the application (see enclosure).

Region V was informed that a Federal Register notice should be published informing the public that a grant application was received. This is standard procedure for grant applications and does not require very much effort.

Region V was also informed that the need for a public hearing should be determined on the basis of planned activities identified in the approved Reclamation Plan. Public participation is required in the Plan development and grant implementation.

Detailed procedures were prepared and distributed to the Regions for processing construction project grants, and the maximum amount of time required to process and approve grant applications is 90 days. Less time may be required depending on the flow of activities.

My staff recently discussed the procedures for grant applications with your staff by telephone and outlined the requirements as set forth in the regulations and OMB Circular A-102. As requested, the regulations and procedures were mailed to your office on April 15, 1981.

In addition, representatives from my staff and Mr. Brace Hayden, representative of the State of Montana and a representative from Wyoming met here in Washington on March 12, 1981, to discuss the grants and cooperative agreement concerns.

A conference call was held recently with representatives from my staff and Region V to discuss concerns over the Federal Register notice requirements and the Briefing Paper for the State of Montana's grant application. The issue of the Briefing Paper was resolved and Region V promised to resubmit the required Briefing Paper which was telefaxed into Headquarters on May 4, 1981. The Briefing Paper has been submitted to the Assistant Secretary for Energy and Minerals for approval.

I hope this letter clarifies the circumstances associated with Montana's grant application.

If my office can be of further assistance to you, please do not hesitate to call or write.

Sincerely,

Andrew V. Bailey

Acting Director

Enclosure

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION

STATE OF MONTANA

(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

GARETH C. MOON, COMMISSIONER

July 15, 1981

MEMORANDUM

TO: Commissioner Moon

FROM: Dick Juntunen DJ

SUBJECT: First Annual Work Plan Grant Problems

The whole process taken to obtain the First Annual Work Plan Grant took from October 16, 1980 to June 29, 1981. We now have a signed grant but do not yet have the letter-of-credit which should be automatically forwarded to us upon grant completion.

As outlined in your letter to Steve Shipley and my later notes on the subject, the main problems have been lack of communication by the Washington office with the regional office and inability of the Washington office to keep things moving. Both Brace and I made numerous phone calls to Mr. Beasley and his boss, Mr. Bailey, to try to get the grant moving. I imagine these calls prompted the Washington office to stop bickering with the regional office and resulted in the conference call of May 4 mentioned in Mr. Bailey's letter.

It wasn't until I called Mr. Bailey and Mr. Beasley's secretary on May 21, that the briefing paper was moved from Beasley's desk to Bailey's desk for signature by the Assistant Secretary for Energy and Minerals. After that call, we still didn't receive the signed grant until June 29.

Why must we constantly prod the Washington office to obtain a grant, long after the urgency of the situation was known to all concerned? Why did the grant stall in Washington at every step? How can we expect to operate our program in the future when a simple administration grant, of urgent needs, takes over 8 months to be processed?

jc

AN EQUAL OPPORTUNITY EMPLOYER

Senator Melcher. Mr. Rosenbaum.

STATEMENT OF DAVE ROSENBAUM, DIRECTOR, DIVISION OF ABANDONED LANDS, KENTUCKY NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, FRANKFORT, KY.

Mr. Rosenbaum. I appreciate the opportunity to appear before the committee to present this testimony. In the interest of brevity I'll summarize my testimony, realizing that it will be entered in its entirety in the record.

We recognize that OSM has made substantial progress in several areas toward simplifying the AML grant application and oversight requirements. However, we have in this testimony three principal areas which we believe need additional attention in order to make the program better.

The first issue deals with the appropriations issue. We are recommending that the AML program be established as continuing appropriations so that grant funds will be available at such time that the States have the capability to use them.

Our second issue deals with the AML trust fund. As you noted earlier, Public Law 95-87 does indeed define the AML fund as the trust fund, and we're very strongly recommending that it remains as that, as a trust fund.

Our third major concern involves allocation of the Federal discretionary funds. Section 42(g)(1) of the act provides that the geographic allocation of expenditures should reflect not only the national program needs but the area from which the fees were collected.

Recently OSM has published two drafts of an abandoned mine land policy. In that policy it holds that the summary allocation of the 50 percent of the funds of the State satisfies the geographic allocation. We very strongly disagree with that position, and we are suggesting in our testimony that the funds which could otherwise have been allocated to the Secretary of Agriculture for the RAMP program since it is being phased out and transferred to the State, that those funds be allocated to the States in accordance with section 42(g)(2) of the act.

I appreciate again the opportunity to present these comments on behalf of the Commonwealth of Kentucky, and we are certainly willing to provide you any additional information or to answer questions if it would be helpful.

[The prepared statement of Mr. Rosenbaum follows:]

TESTIMONY OF

DAVE ROSENBAUM
DIRECTOR
DIVISION OF ABANDONED LANDS
KENTUCKY NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

REPRESENTING

THE

COMMONWEALTH OF KENTUCKY

BEFORE THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

WASHINGTON, D.C.
FEBRUARY 24, 1983

Mr. Chairman, members of the committee, my name is Dave Rosenbaum. I am the Director of the Kentucky Division of Abandoned Lands. I appreciate the opportunity to appear before you and present the following testimony for the Commonwealth of Kentucky.

As you know, Kentucky is the nation's leader in coal production and consequently our coal operators contribute the largest portion of the reclamation fees which comprise the Abandoned Mine Land Reclamation Trust Fund. Coal has been mined in Kentucky for decades and thus thousands of acres of land and miles of streams have been adversely impacted by past coal mining. Prior to the enactment of Public Law 95-87, our state abandoned mine land reclamation efforts were limited because of the lack of available funding. The Abandoned Mine Land Reclamation Program now affords us the opportunity to address at least the most severe of these problems. Kentucky received approval of its AML Program on May 18, 1982. We have developed the capability to manage a large Abandoned Mine Land Reclamation Program.

OSM has made progress in several areas toward simplifying the AML grant and oversight requirements. I would present, however, for your consideration three principal issues where additional attention is needed so that the Abandoned Mine Land Reclamation Program can be as effective as Congress intended when Public Law 95-87 was enacted.

I. Continuing Appropriation

We would propose for your consideration that the AML funds allocated to the states by Section 402(g)(2) of the Act be established as a permanent, continuing appropriation. This would assure that monies are available for granting at such time as the states have the capability to use these funds for eligible AML projects.

Section 401(d) of the Act provides that monies will be available for the purposes of the Act only when they have been appropriated by the Congress. During the initial years following passage of Public Law 95-87 very few of the states had received approval of their AML programs. Although the state AML program appropriations were substantially less than the fees being collected and allocated among the states, there were sufficient appropriations to honor the few grant requests that OSM was receiving. As more of the states received approval of their AML programs, the yearly grant applications have been increasing accordingly.

We are concerned that the current fiscal year appropriation of $132,500,000 will not be sufficient to honor the grant requests which will be submitted by the states. Information which we received from the other states indicates that they expect to submit grant applications during FY 83 for substantially in excess of $132,500,000.

Although the principal objective of the Abandoned Mine Land Program is to restore and reclaim lands and waters which have been adversely impacted by past mining, the projects which will

BE IMPLEMENTED UNDER THIS PROGRAM OFFER AN OPPORTUNITY TO ADDRESS THE VERY CRITICAL UNEMPLOYMENT PROBLEMS WHICH WE IN KENTUCKY AND THE OTHER STATES ARE EXPERIENCING THROUGHOUT OUR COAL MINING REGIONS.

IN KENTUCKY STATEWIDE UNEMPLOYMENT IS 11.3 PERCENT. THE MINING LABOR FORCE IS, HOWEVER, EXPERIENCING 30.2 PERCENT UNEMPLOYMENT. THE MINING INDUSTRY HAS THE EQUIPMENT, THE CAPABILITY AND THE EXPERIENCE TO PERFORM THE RECLAMATION PROJECTS WHICH WILL BE UNDERTAKEN UNDER THE AML PROGRAM.

OUR DEPARTMENT OF COMMERCE ESTIMATES THAT EACH MILLION DOLLARS SPENT FOR RECLAMATION CONSTRUCTION WILL GENERATE APPROXIMATELY FORTY (40) NEW JOBS. WE MUST RECOGNIZE THAT THE CREATION OF JOBS IN THE COALFIELDS IS AN IMPORTANT, INCIDENTAL BENEFIT OF THIS PROGRAM AND UNDERSCORES THE IMPORTANCE OF HAVING THE MONIES WHICH HAVE BEEN COLLECTED AND ALLOCATED TO THE STATE AML PROGRAMS AVAILABLE FOR GRANTING.

II. TRUST FUND

SECTION 401(A) OF PUBLIC LAW 95-87 ESTABLISHES THE ABANDONED MINE RECLAMATION FUND AS A "TRUST FUND." WE IN KENTUCKY HAVE BEEN AND CONTINUE TO BE, CONCERNED THAT THE ABANDONED MINE LAND RECLAMATION FUND IS NOT BEING MANAGED AS A TRUST FUND. THE FUND IS NOT ACCRUING INTEREST IN THE INTERIM BEFORE THE MONIES ARE APPLIED TO THEIR INTENDED PURPOSE, ABANDONED MINE LAND RECLAMATION. RECLAMATION FEES WHICH ARE COLLECTED AND HELD IN A NONINTEREST BEARING FUND WILL PURCHASE PROGRESSIVELY LESS RECLAMATION. AT THE MINIMUM, THE ADMINISTRATIVE EXPENSES OF

ALL THE STATE AML RECLAMATION PROGRAMS COULD BE FUNDED FROM A REASONABLE INTEREST ON THE BALANCE IN THE AML FUND. WE ENCOURAGE THAT THE AML "TRUST FUND" BE MANAGED AS A TRUST FUND.

III. FUND ALLOCATION

OUR THIRD MAJOR AREA OF CONCERN INVOLVES THE ALLOCATION OF THE FIFTY (50) PERCENT FEDERAL DISCRETIONARY PORTION OF THE AML FUNDS. SECTION 402(G)(1) OF THE ACT STATES "THE GEOGRAPHIC ALLOCATION OF EXPENDITURES FROM THE FUND SHALL REFLECT BOTH THE AREA FROM WHICH THE REVENUE WAS DERIVED AS WELL AS THE NATIONAL PROGRAM NEEDS FOR THE FUNDS." IN RECENT MONTHS OSM HAS CIRCULATED TWO DRAFTS OF AN ABANDONED MINE LAND POLICY DOCUMENT WHICH CONTAINS A FUND ALLOCATION MECHANISM. THIS MECHANISM PRESUPPOSES THAT THE SUMMARY ALLOCATION AS PROVIDED IN SECTION 402(G)(2) OF FIFTY (50) PERCENT OF THE FEES COLLECTED IN A STATE SATISFIES THE PROVISION RELATING TO THE GEOGRAPHIC ALLOCATION OF EXPENDITURES. WE VERY STRONGLY DISAGREE. WE SUBMIT THAT THE GEOGRAPHIC AREA FROM WHICH THE REVENUE WAS DERIVED SHOULD BE AN ELEMENT IN ANY MECHANISM FOR THE ALLOCATION OF THE FEDERAL DISCRETIONARY PORTION OF THE FUND.

ONE MECHANISM FOR ADDRESSING THIS CONCERN WOULD BE THROUGH THE ALLOCATION TO THE STATES OF FUNDS WHICH COULD OTHERWISE BE TRANSFERRED TO THE SECRETARY OF AGRICULTURE UNDER SECTION 401(c)(2) OF THE ACT. KENTUCKY BASICALLY SUPPORTS THE CONCEPT OF THE PLACEMENT OF RAMP FUNDS UNDER THE JURISDICTION OF STATE PROGRAMS. WE AGREE THAT THE STATE PROGRAM IS THE PROPER MECHANISM FOR

DECIDING THE RELATIVE PRIORITY AND SCHEDULING OF RECLAMATION OF ELIGIBLE AREAS WITHIN THE STATE. WE THEREFORE SUGGEST THAT THE TWENTY (20) PERCENT OF THE FEES COLLECTED WHICH COULD OTHERWISE BE TRANSFERRED TO THE SECRETARY OF AGRICULTURE BE ALLOCATED TO THE STATES IN ACCORDANCE WITH THE PROVISION OF SECTION 402(G)(2). THE STATES COULD THEN CONTRACT WITH LOCAL SOIL AND WATER CONSERVATION DISTRICTS OR IMPLEMENT THE ADDITIONAL PROJECTS THROUGH THEIR STATE PROGRAMS. THIS ALLOCATION OF RAMP FUNDS TO THE STATES WOULD LEAVE THE OFFICE OF SURFACE MINING WITH A SUBSTANTIAL POOL OF DISCRETIONARY MONIES WITH WHICH TO FUND AML RECLAMATION IN STATES WHERE CURRENT FEE COLLECTIONS ARE NOT ADEQUATE.

AGAIN, I APPRECIATE THE OPPORTUNITY TO PRESENT THESE COMMENTS ON BEHALF OF KENTUCKY AND AM WILLING TO ADDRESS ANY QUESTIONS YOU MAY HAVE CONCERNING KENTUCKY'S AML PROGRAM.

Senator **MELCHER**. Thank you very much, Mr. Rosenbaum.
Mr. Wahlquist.

STATEMENT OF BRENT T. WAHLQUIST, DEPUTY DIRECTOR, WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES, AND CHIEF, RECLAMATION DIVISION

Mr. **WAHLQUIST**. I'd like to express my appreciation for the opportunity to address this committee today, particularly since I was not on the original agenda.

West Virginia has just submitted a qrant request for $20 million, and we would like to add an additional $10 to $15 million request for that in the next few months. Our 1984 fiscal year projections are for about $30 million. If these dollars are not made available, our minimum will be retarded.

The success of our program is contingent on the preplanned sequence of events occurring on schedule. For example, if the $20 million we are seeking isn't available by June our planned work for the season will be delayed until fall and construction will be bogged down by winter weather. And much of the effort then that we have gone into in the past 2 years will fall short of its goal.

We support a proposed amendment to title IV of the Surface Mining Act which was introduced yesterday by Congressman Rahall in the House, that is House bill No. 1622. This proposal if enacted would do two important things.

First, it will remove the requirements for grants, the major source of time delays in obtaining funding. The proposal does not affect planning requirements for projects as required under the act. Environmental assessments, eligibility determinations, et cetera, still would be required. What would be eliminated would be the delays in reviewing and approving budgets for selected projects. And even more importantly, the delays experienced in amending these budgets when changes become necessary, as they always do, States would still be responsible for maintaining strict physical controls on records of expenditures, and this is as it should be. Second, the proposal would make the money directly available to the States.

One item that should be addressed is that of interest. Section 401(a) of the act specifically describes abandoned mine reclamation fund as a trust fund. Every Federal trust fund bears interest, such as the highway trust fund, the air—and airway trust fund, the inland waterways trust fund, and the hazardous waste and toxic bills Superfund. These trust funds are all supported by specific taxes on user fees not unlike the reclamation fee paid on every ton of mined coal. However, interest does not accrue on the abandoned mine reclamation fund. This we feel is poor fiscal management. It should be corrected.

We are also concerned about the priorities that are often established in these reclamation funds. Some interpret that, that priority 1 must be completed before priority 2 projects can be undertaken. Many of the priority 1 projects that are occurring in West Virginia at this time are those associated with subsidence or burning refuge areas which are not labor intensive and do little to help us in our efforts to put 33 percent of our labor force back to work.

We would appreciate being able to get on with some priority 3 projects which is really the restoration of land and water.

I thank you for the opportunity to make these comments today.

Senator **Melcher**. And I thank you too.

[The prepared statement of Mr. Wahlquist follows:]

STATEMENT OF BRENT T. WAHLQUIST
DEPUTY DIRECTOR OF THE WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
AND
CHIEF OF THE RECLAMATION DIVISION

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

FEBRUARY 24, 1983

MR. CHAIRMAN, MY NAME IS BRENT WAHLQUIST. I AM DEPUTY DIRECTOR OF THE WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES AND CHIEF OF THE DIVISION OF RECLAMATION WITHIN THE DEPARTMENT. THE DIVISION OF RECLAMATION IS RESPONSIBLE FOR IMPLEMENTING THE FEDERAL SURFACE MINING ACT, INCLUDING THE ABANDONED MINE LANDS PROGRAM IN WEST VIRGINIA. I AM HERE TODAY REPRESENTING THE STATE OF WEST VIRGINIA AT THE REQUEST OF GOVERNOR ROCKEFELLER. LET ME BEGIN BY EXPRESSING MY THANKS AND APPRECIATION FOR THE OPPORTUNITY TO COME BEFORE THIS DISTINGUISHED COMMITTEE TO PRESENT THE VIEW OF MY STATE ON TITLE IV OF THE FEDERAL SURFACE MINING ACT OF 1977.

WEST VIRGINIA IS PROUD TO BE AMONG THE FIRST STATES IN THE NATION TO HAVE AN APPROVED STATE RECLAMATION PLAN FOR THE RECLAMATION OF ABANDONED MINE LANDS. WITH OVER 100,000 ACRES OF LAND ADVERSELY AFFECTED BY PAST MINING OPERATIONS, WE HAVE LOOKED TO THIS PROGRAM WITH GREAT ENTHUSIASM. IT WAS OUR GREAT HOPE THAT UPON APPROVAL OF THIS PLAN, WE COULD BEGIN THE TASK OF RESTORING OUR SCARRED LAND AND POLLUTED WATERS, WHICH ARE THE LEGACY OF MINING PRACTICES FROM A PREVIOUS ERA. WE HAVE BEEN TRYING FOR TWO YEARS NOW TO SEIZE UPON THIS OPPORTUNITY WITH LIMITED SUCCESS. THE ENCUMBRANCES TO IMPLEMENTING THE TITLE IV PROGRAM ARE MANY AND, QUITE HONESTLY, ARE NOT ALL THE RESULT OF THE FEDERAL

BUREAUCRACY. WE HAVE OUR SHARE OF RED TAPE AT THE STATE LEVEL ALSO.

WITH 25,000 OF WEST VIRGINIA'S COAL INDUSTRY EMPLOYEES OUT OF WORK, OR 33.2 PERCENT OF THE LABOR FORCE, WE MUST TAKE EVERY STEP POSSIBLE TO EXPEDITE THE AML PROGRAM. THE AML PROGRAM CAN BE USED TO PROVIDE MEANINGFUL AND PRODUCTIVE EMPLOYMENT OPPORTUNITIES WHILE ACHIEVING DESIRABLE ENVIRONMENTAL RESULTS. HOWEVER, TO ACHIEVE THIS OBJECTIVE, MANY OF THE OPERATIONAL PROCEDURES OF THE AML PROGRAM MUST BE CHANGED. TODAY, I WILL OFFER SOME RECOMMENDATIONS THAT CAN EXPEDITE THIS IMPORTANT PROGRAM.

IN TAKING AN EARLY LEAD IN IMPLEMENTING AN AML PROGRAM, WEST VIRGINIA HAS BENEFITED BY HAVING GONE THROUGH THE LABORIOUS AND TIME-CONSUMING TASK OF ACQUIRING APPROVAL OF ITS PROGRAM. WE ARE PROUD TO HAVE BEEN THE FIRST STATE IN THE NATION TO COMPLETE AN ABANDONED MINE LAND PROJECT UNDER A GRANT TO A STATE. SINCE THEN, WE HAVE COMPLETED 5 ADDITIONAL PROJECTS AND HAVE 12 MORE UNDER CONSTRUCTION. WE ARE GAINING EXPERIENCE IN AML WORK. WE ARE GAINING EXPERIENCE IN GRANT APPLICATIONS AND ARE GAINING EXPERIENCE IN PROJECT SELECTION AND PROJECT PLANNING. MOST IMPORTANTLY, WE HAVE ESTABLISHED A WORKING RELATIONSHIP WITH OSM AT BOTH THE STATE AND FEDERAL LEVEL. WE HAVE LEARNED TO WORK TOGETHER COOPERATIVELY, AND I MUST COMMEND THE CURRENT OSM

STAFF FOR DEVELOPING THE POLICIES AND PROCEDURES TO MAKE THIS COOPERATION POSSIBLE. AS A RESULT OF THIS EXPERIENCE AND COOPERATION WITH OSM, WEST VIRGINIA IS NOW READY TO MOVE AGGRESSIVELY FORWARD WITH ITS AML PROGRAM. BUT THERE ARE CONSTRAINTS TO THIS PROGRESS. THE GRANT PROCEDURES ARE TOO SLOW. THE ISSUANCE OF A LETTER OF CREDIT IS A SLOW PROCESS, AND CONGRESS MAY NOT APPROPRIATE ENOUGH MONEY. IN SUMMARY, WE MAY NOT GET THE DOLLARS WE NEED TO MAKE THE PROGRAM MOVE.

WE ARE TOLD THAT A GRANT CAN BE PROCESSED IN 60 DAYS; THAT A LETTER OF CREDIT CAN BE ISSUED IN 10 DAYS; AND THAT THE STATE'S 50% SHARE OF THE FUND IS OURS FOR THE ASKING. OUR EXPERIENCE IS THAT IT TAKES 6 TO 8 MONTHS TO PROCESS A GRANT, 30 TO 60 DAYS TO HAVE A LETTER OF CREDIT ISSUED, AND WE ARE NOW BEING ADVISED NOT TO ASK FOR GRANTS IN THE 20 TO 30 MILLION DOLLAR RANGE BECAUSE THE MONEY MAY NOT BE AVAILABLE. THESE ARE DISTURBING FACTS TO WEST VIRGINIA BECAUSE WE HAVE JUST SUBMITTED A GRANT REQUEST FOR 20 MILLION DOLLARS AND WOULD LIKE TO ADD AN ADDITIONAL 10 TO 15 MILLION DOLLAR REQUEST TO THAT IN A FEW MONTHS. OUR 1984 FISCAL YEAR PROJECTIONS ARE FOR ABOUT 30 MILLION DOLLARS. WE HAVE, FOR TWO YEARS NOW, BEEN PUTTING TOGETHER PROJECTS TO UTILIZE THESE DOLLARS IN AN EFFICIENT AND EFFECTIVE WAY. THAT PROGRAM IS IN PLACE NOW, AND WE

ARE READY TO RECEIVE AND EXPEND THESE DOLLARS. IF THESE DOLLARS ARE NOT MADE AVAILABLE AND QUICKLY, OUR FORWARD MOMENTUM CERTAINLY WILL BE RETARDED. THE SUCCESS OF OUR PROGRAM IS CONTINGENT ON A PRE-PLANNED SEQUENCE OF EVENTS OCCURRING ON SCHEDULE. FOR EXAMPLE, IF THE 20 MILLION DOLLARS WE ARE SEEKING ISN'T AVAILABLE BY JUNE, OUR WORK PLANNED FOR THIS SEASON WILL BE DELAYED UNTIL FALL, AND CONSTRUCTION WILL BE BOGGED DOWN BY WINTER WEATHER. OUR PROGRAM FOR PLANNING AND DESIGN WILL BE THROWN OFF SCHEDULE, AND OUR TWO YEARS OF PLANNING AND IMPLEMENTATION WILL FALL FAR SHORT OF ITS GOAL. THE EFFICIENT AND EFFECTIVE UTILIZATION OF 50 MILLION DOLLARS IS NOT A HAPHAZARD PROCESS. THE FAILURE OF TIMELY AVAILABILITY OF FUNDING COULD IMPAIR OUR PROGRAM, AND THAT CANNOT BE ALLOWED TO OCCUR TO A PROPOSED AMENDMENT TO TITLE IV OF THE SURFACE MINING ACT, AN AMENDMENT WHICH WILL SOON BE INTRODUCED BY OUR OWN CONGRESSMAN NICK "JOE" RAHALL IN THE HOUSE.

THIS PROPOSAL, IF ENACTED, WILL DO TWO IMPORTANT THINGS:

FIRST, IT WILL REMOVE THE REQUIREMENTS FOR GRANTS--THE MAJOR SOURCE OF TIME DELAYS IN OBTAINING FUNDING. THE PROPOSAL DOES NOT AFFECT THE PLANNING

REQUIREMENTS FOR PROJECTS AS REQUIRED UNDER THE ACT. ENVIRONMENTAL ASSESSMENTS, A-95 REVIEWS, ELIGIBILITY DETERMINATIONS, ETC., STILL WILL BE REQUIRED. AS I STATED EARLIER, WE NOW KNOW HOW TO ACCOMPLISH TASKS. WE HAVE THE EXPERIENCE, AND THE REVIEW AND PROCESSING OF THESE ITEMS CAN BE ACCOMPLISHED BY OSM IN 30 TO 60 DAYS. WHAT WILL BE ELIMINATED WOULD BE THE DELAYS IN REVIEWING AND APPROVING BUDGETS FOR THE SELECTED PROJECTS. EVEN MORE IMPORTANTLY, THE DELAYS EXPERIENCED IN AMENDING THESE BUDGETS WHEN CHANGES BECOME NECESSARY--AS THEY ALWAYS DO--WILL BE ELIMINATED. STATES STILL WILL BE RESPONSIBLE FOR MAINTAINING STRICT FISCAL CONTROLS AND RECORDS OF EXPENDITURES, AND THIS IS AS IT SHOULD BE.

SECONDLY, THIS PROPOSAL WILL MAKE THE MONEY DIRECTLY AVAILABLE TO THE STATES. THIS ELIMINATES TIME DELAYS IN PROCESSING LETTERS OF CREDIT AND ASSURES THE STATES THAT CONTINUOUS FUNDING WILL BE AVAILABLE WHEN THEY NEED IT. THE STATES WILL BE ABLE TO PROCEED AS PROJECTS ARE READY FOR CONSTRUCTION.

WE BELIEVE THAT THESE CHANGES ARE ESSENTIAL TO A SUCCESSFUL AML PROGRAM.

ONE OTHER ITEM ADDRESSED BY THIS PROPOSAL IS ONE THAT WE DEEM TO BE JUST GOOD COMMON SENSE. THAT, OF COURSE, IS THE MATTER OF INTEREST BEING PAID ON

THE ASSETS OF THE FUND. TO COLLECT OVER A BILLION DOLLARS IN A TRUST FUND OVER A PERIOD OF FIVE YEARS, AND TO ALLOW THE MONEY TO EARN NO INTEREST, IS POOR FINANCIAL MANAGEMENT IN OUR VIEW. THIS GLARING INADEQUACY IN THE ACT MUST BE CORRECTED.

THERE IS ONE ASPECT OF TITLE IV TO WHICH I WOULD ASK THIS COMMITTEE TO GIVE CAREFUL CONSIDERATION. SECTION 403 OF THE ACT DESCRIBES A SYSTEM OF PRIORITIES FOR PROJECT SELECTION. CONGRESS DISPLAYED GREAT WISDOM IN TAKING ACTION TO ENSURE THAT THE LARGE SUMS IN THE FUND BE UTILIZED IN A RESPONSIBLE MANNER. WE TAKE NO ISSUE WITH THE PRIORITIES ESTABLISHED BY THE ACT; HOWEVER, THE CONGRESSIONAL INTENT REGARDING THE ORDER IN WHICH THESE PRIORITIES ARE ADDRESSED HAS TWO DISTINCTLY DIFFERENT INTERPRETATIONS. SOME INTERPRET THE PROVISION TO MEAN THAT STATES NEED ONLY TO IDENTIFY PRIORITY ONE PROJECTS AND DEVELOP PROCEDURES TO ADDRESS THEM BEFORE GOING ON TO LESSER PRIORITY PROJECTS. OTHERS INTERPRET THE PROVISION TO MEAN THAT ALL PRIORITY ONE PROJECTS MUST BE COMPLETED BEFORE GOING ON TO OTHER PRIORITY PROJECTS. THIS IS AN ISSUE THAT MUST BE CLARIFIED.

THIS MATTER IS OF PARAMOUNT IMPORTANCE TO WEST VIRGINIA. HAVING GONE THROUGH THE INVENTORY PROCESS AS REQUIRED UNDER THE FEDERAL PROVISIONS, WE HAVE IDENTIFIED OUR PRIORITY ONE AND PRIORITY TWO PROJECTS. IT HAS BEEN SUGGESTED THAT OSM'S RECOMMENDED ALLOCATIONS TO THE STATES WILL BE BASED UPON THE NUMBER OF HIGH PRIORITY PROJECTS IN ITS INVENTORY. I CANNOT IMAGINE THAT THIS WAS THE CONGRESSIONAL INTENT. THEREFORE, I ASK YOU TO CONSIDER CLARIFYING LANGUAGE TO ALLOW WEST VIRGINIA AND OTHER STATES TO DO WORK AS PRIORITY TWO AND PRIORITY THREE PROJECTS WHILE PRIORITY ONE PROJECTS ARE ONGOING AND TO ALLOW MORE FLEXIBILITY IN PROJECT SELECTION.

IN ADDITION TO CLARIFYING A POINT OF CONTENTION, IT ALSO WILL BE HELPFUL TO THE STATE IN ADDRESSING THE PROBLEM OF UNEMPLOYMENT. THIS IS PARTICULARLY TRUE IN WEST VIRGINIA. CURRENTLY, OUR AML PROJECTS CONSIST MOSTLY OF BURNING REFUSE PILES, SEALING OF MINE ENTRIES, AND SUBSIDENCE PROJECTS. THESE PROJECTS DO NOT REQUIRE LARGE COMPLIMENTS OF EQUIPMENT OR MANPOWER. IF WE COULD EXPAND OUR SCOPE OF PROJECTS TO PRIORITY THREE--THE RESTORATION OF LAND AND WATER RESOURCES--WE COULD GET INTO MAJOR EARTH-MOVING PROJECTS WHICH REQUIRE BULLDOZERS, BACKHOES, LOADERS, AND MEN TO OPERATE THEM. WE COULD GREATLY

INCREASE THE NUMBER OF ACRES INVOLVED, THEREBY CREATING JOBS FOR WORKERS FOR SEEDING, MULCHING AND TREE PLANTING. WE IN WEST VIRGINIA KNOW HOW TO DO THESE THINGS. WE HAVE BEEN DOING THIS KIND OF WORK SINCE 1967 WITH OUR SPECIAL RECLAMATION AND BOND FORFEITURE PROGRAM. THE MECHANISM IS IN PLACE TO BEGIN IMMEDIATELY. WE NEED ONLY FOR CONGRESS TO ACT TO MAKE THE FUNDS AVAILABLE AND RELAX THESE PRIORITIES. I BELIEVE IT IS FAIR TO SAY THAT MANY SO CALLED PRIORITY ONE PROJECTS ARE EXTREMELY COSTLY AND BENEFIT FEW PEOPLE.

ONE OTHER POINT I WOULD LIKE TO TOUCH ON BRIEFLY CONCERNS THE USE OF THE DISCRETIONARY MONEY IN THE FUND. I SPEAK OF THE OTHER 50% OF THE FUND THAT IS NOT EARMARKED TO GO DIRECTLY BACK TO THE STATES. THIS MONEY HAS BEEN CLOSELY HELD BY THE SECRETARY, AND RIGHTFULLY SO. THE STATES UNTIL NOW HAVE NOT PROPOSED TO UTILIZE THIS MONEY. THAT SITUATION NO LONGER EXISTS. I URGE THIS COMMITTEE TO CONSIDER LETTING THIS MONEY FLOW TO THE STATES. WE ARE READY TO PUT IT TO USE. WE HAVE OUR PROGRAMS IN PLACE. WE HAVE THE EXPERIENCE AND OSM'S PROGRAMS ARE NOW FIRMLY IN PLACE. IT IS TIME NOW TO LET THE STATES HAVE THE LEAD ROLE IN CARRYING OUT THE PURPOSES AND INTENT OF THE ACT.

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THIS COMMITTEE, I URGE YOU TO CONSIDER THESE SUGGESTIONS CAREFULLY AND ACT WITH FAVOR UPON THEM. THE TITLE IV PROGRAM DEPENDS ON IT. THE STATE'S PROGRAMS DEPEND ON IT, AND THE LIVES, PROSPERITY, AND WELL-BEING OF MANY PEOPLE DEPEND ON IT.

Senator **Melcher**. The constraints we are under here today are that the hearing will have to recess now and take up again at 1:45. Senator Warner will be back then, and he may want to make some points or ask some questions. If it's convenient for you I hope you can be available.

And for the rest of the witnesses on the extensive witness list, I hope it doesn't inconvenience the rest of you to return at 1:45.

Thank you.

The subcommittee is recessed until that time.

[Whereupon, at 12 noon, the hearing was recessed, to reconvene at 1:45 p.m. this same day.]

AFTERNOON SESSION

Senator **Warner** [presiding]. The Chair wishes to express his appreciation to the witnesses and apologize for any inconvenience that may be occasioned. The Senate works in stops and starts. There is never an even pace.

I'd like now to reconstitute the State panels so the State representatives can have further opportunity to address the principal issues that we've outlined today.

It's my understanding that each of you in the session before noontime had the opportunity to speak to the issue, am I correct on that? And if so, we will start again with Mr. Brown and work on a 5-minute rule.

Go right ahead.

Mr. **Brown**. Thank you, Mr. Chairman. What I would like to do is emphasize——

Senator **Warner**. Every witness today will have the opportunity to have their statements put in the record in its entirety. Don't feel an obligation to read into the record all of your statements. The most beneficial aspect from the Chair's respect is to hear in summary the principle points.

Mr. **Brown**. Thank you, Mr. Chairman, and I will summarize.

What we're saying here from the State of Virginia, we would specifically like to recommend that the State receive their 50-percent share of the AML moneys on a quarterly basis and be given control of the approval of their own projects. Two, the RAMP and SOAP money should be funded at a specific percent and the moneys returned to the States on a quarterly basis.

Three, discretionary funds should be put to work for the benefit of the Nation's coalfields as quickly as possible.

I think those, Mr. Chairman, are the three main points that the Commonwealth of Virginia would like to give to this committee, and I would like to add before passing on here to the other States, I'd like to make some remarks about the priority 3's or priorities a little more than priority 1, that we feel need special attention for funding. One of which is the Weiss county regional water system. We submitted that to OSM and with this project there were several other Federal sources that were committed to this project. We were refused on that, and I think as maybe Mr. Harris alluded to earlier, they classified that as a priority 5. We see this to be classified as low as priority 2, and priority 2 really covers the protection of public health, safety, and general welfare from adverse affects of past coal mining practices which does not constitute an extreme danger. We feel that would fit in rather nicely for a project like that.

Also the Pyle River demonstration project. This is a research and development project. We think this deserves special funding and attention.

Virginia has invested over $500,000 on this land, to look at all aspects of post-mining land use. Now OSM recently gave the project $50,000 to continue a research project in making better use of the mining process on Virginia mountain sites. Now it is obvious that additional funds are necessary to develop, we think, uses for our part of the country. And the third one is, these are the three projects we are aware of and we submitted, Commonwealth of Virginia, a geohydrologic study of Virginia coalfields.

We felt this was very important. We asked for $1.2 million approximately. And this was refused in December 1982 because it was felt that would assist more than just small operators. It would in fact serve more than the small operators. However, the small operators could not get the information elsewhere, so we thought this was a project very worthwhile and it should have been funded.

With those remarks, thank you, Mr. Chairman.

Senator **Warner**. I have one question and each of you can address this. What about this priority designation? Are the guidelines sufficiently clear in your judgment?

Mr. **Brown**. No, I don't think so. I think it's left up to interpretation in a lot of cases.

STATEMENT OF TIM GALLAGHER, SENIOR ADMINISTRATIVE ASSISTANT ON BEHALF OF GOV. TED SCHWINDEN, STATE OF MONTANA

Mr. **Gallagher**. My name is Tim Gallagher. I'm senior administrative assistant to Governor Schwinden of Montana. I'm appearing here today on his behalf.

With me is Mr. Dick Juntunen, chief of Montana's abandoned mine land program. Mr. Juntunen is prepared to answer specific questions on Montana's AML program for any members of the committee.

I have deleted some major portions of my testimony from my oral presentation in order to keep it around 5 minutes.

Before elaborating on Montana's specific concerns, I would like to address western regional concerns. Environmental impacts for mining are not just an eastern problem. The west also has its share.

Subsidence threatens communities in Wyoming, Colorado, and North Dakota. Tens of thousands of acres of unreclaimed lands containing open pits, mine shafts, adits, and burning wastepiles have been identified as hazardous to the public in the Western States. Underground mine fires threaten public facilities such as interstate highways and powerlines.

Job losses in Western mining over the past years have been staggering; an estimated 35,000 mining jobs have been lost in the past year alone—a 30-percent reduction in the 8 Western States. That loss represents about 45 percent of the jobs lost nationwide in coal and metal mining in 1982. Those losses understate the unemployment problem because they do not reflect the thousands who have lost jobs dependent upon the mining industry. In the Western mining communities, an unemployment multiplier is at work. For example, in Butte, Mont., when the Anaconda Minerals Mining operations are suspended this summer, the number of mining jobs lost will be 700. We estimate the number of service/support jobs lost will be an additional 700 or so more than that.

An accelerated implementation of the abandoned mine lands program would responsibly deal with major environmental hazards and could reduce unemployment. We estimate that every $1 million expended will create 50 full-time jobs. A $300 million program for the next fiscal year, for instance, could create 15,000 jobs. Jobs our State, our region, and this country need.

Accelerated expenditures from the AML fund would not have a negative impact on the Federal deficit or taxes because the funds have already been collected. Current collections are more than $200 million per year, and at the end of this Federal fiscal year, there will be more than $600 million in the AML account in the U.S. Treasury. The funds are idle, unappropriated, and dedicated for only the AML program.

Appropriating AML funds would contribute to economic recovery in the mining areas without raising new taxes or adversely impacting efforts to balance the budget. Because the program requires neither expenditure from general revenues nor the imposition of additional taxes, it makes little sense not to put these dollars to work. Retaining those funds in the Treasury sidesteps the congressional commitment to repair past environmental damages caused by mining. It is unwise at a time when the recession is creating hardships for unemployed miners, operators, and others in the mining industry.

States are ready and willing to act. The major constraint on the current level of program efforts is the availability of funds. The following table shows the Western States grant requests for the AML program in fiscal year 1983 and fiscal year 1984 and the OSM budget requests for the same years.

I will not elaborate on the table other than on what we should see as a shortfall.

The shortfall in fiscal year 1983 is $36.7 million. Based on the budget request of OSM, the shortfall in fiscal year 1984 is $15.7 million. The 2-year shortfall for all the Western States is $15.7 million which represents projects and employment opportunities needlessly delayed. Utilization of the capabilities of the State AML programs already in place would result in significant amounts of work and ease the acute unemployment problems in our country.

Several OSM policies governing the AML program constrain the ability of States to implement the program we believe Congress intended.

I will skip the next section and move on to an important issue in Montana, that of noncoal projects.

For the information and reference of the members of the subcommittee, I would like to leave 10 copies of a report prepared by the Montana Department of State Lands. I would like to briefly summarize the main points in the report. Time consuming and excessive grant requirements mandated by OSM.

This document Montana Abandoned Mine Reclamation Bureau 1983 Construction Grant AMR–10 represents a recent grant submittal to OSM for new construction projects. States are required to submit at least two similar grant applications of the program. We estimate a total of 100 worker days were expended in the preparation of each application. In order to receive OSM approval, each grant application must address a large number of constantly changing criteria.

The published period of grant review and approval by OSM is 60 to 90 days; in fact, the approval period is much longer. Given the extraordinary level of detail, and number of documents, mistakes made by OSM and the States are inevitable. Many of the grant requirements necessitate subjective interpretations. The most recent grant submitted by the State of Montana required 4 months from the date of submission to the date of approval; and the grant must be resubmitted annually. Although the 4-month processing period was lengthy, it represented an improvement over the State's first annual submission, which required 8 months of review prior to approval.

The grant review and approval process results in needless paper shuffling and delay rather than actual construction project starts. The State of Montana operates its abandoned mine program with three full-time staff. Their time is spread thinly enough without imposing the excessive grant requirements. Colorado estimated it expended 448 worker days on one recent grant application. That amounts to five people working full time for 4 to 5 months.

States with approved programs, which have documented in detail the administration of their abandoned mine program, should not be required to resubmit duplicate documentation with each grant application. OSM has devised an extremely cumbersome process. A system of block grants or annual direct payments to the States would dramatically reduce the needless bureaucratic paper production.

Senator WARNER. I think that enables you to use your 5 minutes. I said the balance of your statement would be put in the record.

[The prepared statement and additional material submitted by Mr. Gallagher follows:]

Statement of

Tim Gallagher
Senior Administrative Assistant on behalf of Governor Ted Schwinden

of

Montana

on

Abandoned Mine Lands Program Oversight Hearings

Before

Sub-Committee on Energy and Mineral Resources
Committee on Energy and Natural Resources

U.S. Senate

Washington, D.C.

February 24, 1983

Good morning, Mr. Chairman and members of the Committee, my name is Tim Gallagher and I am a Senior Administrative Assistant to Governor Ted Schwinden of Montana. I am appearing here today on his behalf. With me is Mr. Dick Juntunen, chief of Montana's Abandoned Mine Land (AML) program. Mr. Juntunen is prepared to answer specific questions on Montana's AML program for any members of the committee.

Montana has been a leader in effective reclamation legislation and had one of the first approved reclamation plans nationwide in both mine regulation and abandoned mine reclamation. Before elaborating on Montana's specific concerns, I would like to briefly address a number of Western regional concerns. Environmental impacts from mining are just not an Eastern problem, the West also has its share. Subsidence threatens communities in Wyoming, Colorado and North Dakota. Tens of thousands of acres of unreclaimed lands containing open pits, mine shafts, adits and burning waste piles have been identified as hazardous to the public in the Western states. Underground mine fires threaten public facilities such as interstate highways and power lines.

Job losses in Western mining over the past years have been staggering; an estimated 35,000 mining jobs have been lost in the past year alone --- a 30 percent reduction in the eight Western states. That loss represents about 45 percent of the jobs lost nationwide in coal and metal mining in 1982. Those losses understate the unemployment problem because they do not reflect the thousands who have lost jobs dependent upon the mining industry. In the Western mining communities, an unemployment multiplier is at work. For example, in Butte, Montana, when the Anaconda Minerals Mining operations are suspended this summer, the number of mining jobs lost will be 700. We estimate the number of service/support jobs lost will be an additional 700 or so.

An accelerated implementation of the Abandoned Mine Lands program would responsibly deal with major environmental hazards and could reduce unemployment. We estimate that every million dollars expended will create 50 full-time jobs. A $300 million dollar program for next fiscal year, for instance, could create 15,000 jobs --- jobs our state, our region and this country need.

Accelerated expenditures from the AML fund would not have a negative impact on the federal deficit or taxes because the funds have already been collected. Current collections are more than $200 million per year, and at the end of this federal fiscal year, there will be more than $600 million in the AML account in the U.S. Treasury. The funds are idle, unappropriated and dedicated for only the AML program.

Appropriating AML funds would contribute to economic recovery in the mining areas without raising new taxes or adversely impacting efforts to balance the budget. Because the program requires neither expenditure from general revenues nor the imposition of additional taxes, it makes little sense not to put these dollars to work. Retaining those funds in the Treasury sidesteps the Congressional commitment to repair past environmental damages caused by mining. It is unwise at a time when the recession is creating hardships for unemployed miners, operators and others in the mining industry.

States are ready and willing to act. The major constraint on the current level of program efforts is the availability of funds. The following table shows the Western states' grant requests for the AML program in FY'83 and FY'84 and the OSM budget requests for the same years.

State	Fiscal Year '83		Fiscal Year '84	
	State Grant Requests	OSM Budget Estimate	State Grant Requests	OSM Budget Estimate
Colorado	5,500,000	4,300,000	11,000,000	2,300,000
Montana	8,646,000	4,700,000	8,500,000	5,800,000
New Mexico	5,900,000	2,800,000	5,000,000	5,100,000
North Dakota	2,000,000	4,000,000	4,000,000	1,700,000
Utah	1,500,000	1,000,000	2,000,000	2,000,000
Wyoming	40,000,000	10,000,000	40,000,000	37,900,000
TOTAL	63,546,000	26,800,000	70,500,000	54,800,000

The shortfall in Fiscal Year '83 is $36.7 million. Based on the budget request of OSM, the shortfall in Fiscal Year '84, is $15.7 million. The two-year shortfall for all the Western states is $52.4 million which represents projects and employment opportunities needlessly delayed. Utilization of the capabilities of the state AML programs already in place would result in significant amounts of work and ease the acute unemployment problems in our country.

Several OSM policies governing the AML program constrain the ability of states to implement the program as we believe Congress intended.

A) State Establishment of Project Priorities In its draft abandoned mine lands policy OSM proposes to establish project priorities for the state AML programs and the state-share of AML funds. The policy appears to apply to both the approval of projects within each state's annual project submission (see pages OSM 68-69 of the FY'84 detailed budget submission), as well as the allocation of the appropriated funds among the states. The draft policy assigns non-coal reclamation projects the lowest ranking possible. It is likely, therefore, those projects may never be funded. We believe this directly contradicts the legislative directive in Section 409 of the Surface Mining Control and Reclamation Act (SMCRA).

OSM policy should clearly establish the state's right to develop its own program and project priorities within the authority of Title IV of SMCRA. Congress should reinforce the authority of states to establish their own project priorities for state-share funds consistent with the broad policies of Title IV.

B) Non-Coal Projects: For the information and reference of the members of the Sub-Committee, I would like to leave 10 copies of a report prepared by the Montana Department of State Lands. I would like to briefly summarize the main points in the report.

1) Time-consuming and excessive grant requirements mandated by OSM.

This document "Montana Abandoned Mine Reclamation Bureau 1983 Construction Grant AMR-10" represents a recent grant submittal to OSM for new construction projects. States are required to submit at least two similar grant applications of the program. We estimate a total of 100 workerdays were expended in the preparation of each application. In order to receive OSM approval, each grant application must address a large number of constantly changing criteria.

The published period of grant review and approval by OSM is 60 to 90 days; in fact, the approval period is much longer. Given the extraordinary level of detail, and number of documents, mistakes made by OSM and the states are inevitable. Many of the grant requirements necessitate subjective interpretations. The most recent grant submitted by the State of Montana required four months from the date of submission to the date of approval; and the grant must be re-submitted annually. Although the four-month processing period was lengthy, it represented an imporvement over the state's first annual submission, which required eight months of review prior to approval.

The grant review and approval process results in needless paper shuffling and delay rather than actual construction project starts. The State of Montana operates its abandoned mine program with three full-time staff. Their time is spread thinly enough without imposing the excessive grant requirements. Colorado estimated it expended 448 workerdays on one recent grant application . . . that amounts to five people working full-time for four to five months!

States with approved programs, which have documented in detail the administration of their abandoned mine program, should not be required to re-submit duplicate documentation with each grant application. OSM has devised an extremely cumbersome process. A system of block grants or annual direct payments to the states would dramatically reduce the needless bureaucratic paper production.

2) Failure of OSM to approve non-coal construction grant requests.

Montana's 1980 cooperative agreement request included several non-coal projects, and a detailed documentation package accompanied the grant application. The non-coal projects were not funded. The non-coal projects were re-submitted with additional clarifying documentaiton in the State's grant application dated February 2, 1982. Throughout the grant application process the State received no direction about non-coal projects even though OSM had been aware of the projects and the State's interest in funding them since 1980. I would like to illustrate the serious helth threat on these sites.

Two inspectors from the Casper, Wyoming office of the OSM reviewed the sites May 11, 1982; neither had experience with hard rock mining and the associated impacts. Funding for the non-coal sites was denied and OSM's position was outlined in a letter dated October 4, 1982, from Mr. Bill Schmidt, assistant director of Program Operations and Inspection. According to his letter, the reason for the denial was ". . . the lack of date to corroborate Montana's contention that the proposed sites constitute a threat to public health and safety." I want to assure the committee that two of the non-coal sites, Bannack and Elkhorn, may require additional documentation, but the Alta Mine, Colorado Tailings, and McLaren Mill have sufficient corroborative data.

Data from our Montana Water Quality Bureau and the U.S. Environmental Protection Agency clearly document and corrobroate the Department of State Lands' position on the non-coal sites. The Alta, Colorado Tailings, and McLaren Mill Tailings projects are necessary for the protection of human health and safety. The sites have been studied extensively for many years by state and federal officials. The Colorado Tailings site has been described as the worst problem on Silver Bow Creek. Silver Bow Creek, incidentally, is rated #1 on the EPA Super Fund List nomination for Montana and #24 nationally!

OSM is overly restrictive in its interpretation of section 409 (c) of the Surface Mining Control and Reclamation Act of 1977. The key phrase in 409 (c) regarding the eligibility of non-coal sites is "reclamation projects (must be) related to the protection of the public health and safety." Federal and state public officials have adequately documented the potential public health problems at the sites. The reclamation would be performed with Montana's share of the fund as specified in the approved state plan.

We request your assistance in clarifying the role of non-coal reclamation projects under the abandoned mine reclamation program. Non-coal reclamation efforts are a vital component of Montana's abandoned mine reclamation program.

Let me summarize:

1) Grant application requirements are burdensome and time-consuming; the process should be streamlined to eliminate duplication.

2) OSM has adopted an overly narrow and restrictive interpretation of the law. One Montana site ranked 24th nationwide on the EPA Super Fund List, was rejected by OSM on the grounds it was not threatening to public health and safety. If OSM will not fund the Silver Bow Creek project, I doubt if any will qualify as being related to the protection of public health or safety.

D) State Managed Research and Demonstration Project. Because of the uncertainty surrounding reclamation in the West, Congress included authority under Title IV for OSM to support "research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques." (Sec. 403 (4) of P.L. 95-87)

A number of Western states have identified research and demonstration projects and are prepared to move forward. Alaska, Wyoming, North Dakota, Utah and Montana have specific projects in mind. Under OSM's recent draft AML policy statement OSM will perform all research and demonstration projects. Congress should direct the Office of Surface Mining to broaden its draft AML policy by encouraging states to undertake responsible research and demonstration projects.

Before I conclude my testimony, I want to briefly address subsidence insurance --- an innovative proposal developed by Governor Herschler of Wyoming. Subsidence is one of the most unpredictable, expensive and damaging impacts resulting from underground mining. The technology for stabilizing subsidence hazard areas is expensive and uncertain in its application. Subsidence reclamation should address private and public sector losses as provided for in SMCRA.

Because insurance offers the best approach to addressing the uncertainties and cost of subsidence control, the State of Wyoming has proposed that AML funds be used to underwrite a subsidence insurance program. The State of Wyoming does not believe SMCRA requires an amendment to use the funds in this manner. The State of Montana concurs and recommends that Congress encourage OSM to fund this type of insurance program as part of State AML Programs. A complete explanation of the proposal is contained in the attached statement of Governor Herschler made on February 17, 1983, before the U.S. House of Representatives Subcommittee on Energy and Environment.

In closing, I want to draw your attention to the letters of support from each of the Western Governors. I request that these letters, along with the February 17, 1983, testimony of Governor Ed Herschler before the House Interior Committee, be made part of my testimony and included in the printed record. Additional details on a number of the points I have raised are included in Governor Herschler's statement and its attachments.

I thank you for this opportunity to testify. On behalf of my associate Mr. Juntunen, Governor Schwinden and the State of Montana, thank you for your continued consideration of this important matter.

TABLE 15B

			- Appropriation		= Unappropriated Balance in Fund (End-of-Year)		
Fiscal Year	Unappropriated Balance in Fund (Start of Year) +	Total Receipts	State Share 1/	Federal Share 2/	State Share	Federal Share	Total
1978	-0-	105,444	———	36,647	52,722	16,075	68,797
1979	68,797	184,443	——-	61,451	144,939	46,840	191,789
1980	191,779	199,000	4,394	90,449	240,045	55,891	295,936
1981	295,936	192,657	29,000	53,485	307,374	98,734	406,108
1982	406,108	222,643	59,136	56,197	359,560	153,858	513,418
1983	513,418	227,618	117,500	43,709	355,869	223,958	579,827
1984	579,827	230,800	133,100	85,702	338,169	253,656	591,825

AML National Inventory: $400,000

The National AML Inventory includes information on unreclaimed abandoned mine problem areas in 27 States and three Indian Reservations. Changes to the inventory are monitored for validity and consistency by each Field Office. This effort is coordinated by OSM Headquarters. The initial inventory will be completed in the Spring of 1983 and then periodically updated.

The Inventory provides a planning and monitoring tool for the States and OSM. In general State programs must first address Priority 1 and 2 projects 3/. As the Inventory has been designed to assist in identifying and describing these projects States will be expected to select and justify projects for inclusion in their annual project workplans using Inventory data. They also will be expected to update the Inventory as new problems are identified or revisions are needed.

1/ State share through Fiscal Year 1982 represents only funds actually awarded to the States for reclamation program grants, and unobligated balance of $1,116,000 at September 30, 1982.

2/ Federal share includes support for cooperative agreements with States to develop reclamation programs and the first annual project submission, supplements to State Reclamation Program Grants from the Secretary's discretionary share, and Small Operator Assistance Payments as well as support for Federal programs which include Reclamation Fund Management, Federal Reclamation Projects, RAMP, and General Administration.

3/ As provided in Section 403 of the Surface Mining Control and Reclamation Act, Priority 1 and 2 projects are; (1) protection of public health, safety, general welfare and property from extreme danger of adverse affects of coal mining; and (2) protection of public health, safety, and general welfare from adverse affects of coal mining.

The Inventory will be instrumental in Federal actions to (1) allocate the Secretarial-share monies in the Fund, and (2) review and approve projects included in grant requests. Funds from the Secretary's discretionary share will be allocated to States in proportion to their needs for accomplishing high priority reclamation projects after deducting the total State-share monies projected to be available over the life of the Fund. The need for grant funding will be determined primarily through base cost data contained in the Inventory. In reviewing grant request, projects will be checked to determine if they are included in the Inventory; that the cost data in the Inventory and actual grant request are similar; that the cost estimates for particular projects generally conform to costs incurred for similarly-located and configured projects; and that projects have highest priority for funding as compared to other high priority problems. Through this process OSM will ensure that the Fund is being used in accordance with the Act and that approved reclamation projects result in the greatest return on investment possible. The inventory will also be used to provide OSM and States with information to assist in planning and evaluating reclamation efforts, monitoring the use of monies, and determining State staff requirements.

The projected resources required and workload output in Fiscal Year 1984 for this subactivity are as follows:

Fiscal Year 1984 Program
Resource Requirements

Component	FY 1984 Base FTE-T	FY 1984 Base Amount	FY 1984 Estimate FTE-T	FY 1984 Estimate Amount	Inc(+) Dec(-) FTE-T	Inc(+) Dec(-) Amount
1. Reclamation program planning, coordination and management	20	621	20	750	---	+129
2. State program assistance, review, and monitoring	48	1,478	48	2,148	---	+670
3. National inventory maintenance	2	450	2	400	---	-50
4. Fee Compliance	70	2,529	70	2,750	---	+221
Total	140	5,078	140	6,048	---	+970

Table 16
Workload Indicators

	FISCAL YEAR 1984	
1. National AML Inventory Maintenance		
a. Review/validation of new problem area data	350	determinations
b. Review/validation of revised problem area data	500	reviews
c. Data entry of new/revised data (including changes)	1,000	entries
d. Production of standard reports	20	reports
e. Special information requests/analysis	15	replys
f. Oversight investigations on data	10	investigations

For inclusion with the testimony of Mr. Tim Gallagher, Senior Administrative Assistant to Gov. Ted Schwinden of Montana, before the Sub-Committee on Energy and Mineral Resources, Committee on Energy and Natural Resources, U.S. Senate, February 24, 1983.

Statement of

Governor Ed Herschler

(Wyoming)

on

A Joint Program of Abandoned Mine Lands Reclamation and Alleviation of Unemployment in Mining Areas

Before

Sub-Committee on Energy and Environment
Committee on Interior and Insular Affairs

U.S. House of Representatives

Washington, D.C.

February 17, 1983

Mr. Chairman, members of the Committee, good morning. Your hearing today addresses two important and timely issues for the nation--environmental repair and employment. Much is discussed about what can be done on both issues. My position is that we have the ability, under the Abandoned Mine Lands Program, to finally get something done.

As you well know, the Federal Surface Mining Act assesses a tax on coal production to finance the reclamation of abandoned mines. As one would expect after five years, the Treasury account balance is somewhat staggering, with over $904 million in receipts. Wyoming's allocation alone is nearly $136 million, or 15 percent of the nation's total. This money can and should be put to use, employing workers and idle equipment, to repair past mining damages.

The Western Abandoned Mine Lands Problem

Often, abandoned mines are discussed as an Eastern, or Appalachian problem. However, the western landscape has its share of scars from the past. As examples:

o Ground subsidence threatens communities in Wyoming, Colorado and North Dakota. The citizens in Rock Springs, Wyoming, live with the imminent threat of subsidence from abandoned coal mines underlying the city. While some subsidence incidents have received wide public attention, many minor occurrences go unreported due to a growing concern over diminished property values.

o Thousands of acres of unreclaimed lands containing open pits, mine shafts and adits have been identified as hazardous to the public. These lands also adversely affect air and water quality, domestic stock and wildlife resources.

o Finally, mine fires continue to burn out of control, consuming federal, state and private coal resources. One mine fire near Sheridan, Wyoming, has been monitored with earthquake-type research equipment because of its threat to interstate highways and nearby power lines. A few years ago this fire collapsed part of the surface estate, shooting flares some 100 feet above the ground.

Something needs to be done!

Western Mine Area Unemployment

The West has its share of unemployment problems, many of which are concentrated in mining areas. The attached table shows changes in the mining employment situation for the western coal-producing states over the past year. In summary:

- Thirty-three thousand mining jobs have been lost in the last year.
- This loss means that there are 30 percent fewer mining jobs in the eight states as compared to a year ago.
- This loss represents 45 percent of the total number of jobs lost in the United States coal and metal mining industry during the last year.

The Committee should realize that this last year represents a dramatic acceleration of the decline in mining employment which has taken place in the eight states over the past three years. In the previous two years (1979-1980), these states experienced an 8,700 employment decline in the mining industry. Thus, the current (last year's) rate of employment loss is more than seven times the rate of the previous two years.

This unemployment situation for the mining industry naturally leads to lay-offs in the secondary trade and service sectors of the western states' economies, further compounding our problems.

An unemployment multiplier has emerged on the western scene. When mining employment losses reach the high levels of 18 to 38 percent of the mining workforce, a broadly based deterioration of the local economies sets in.

The Potential of An Expanded AML Program

The stage is set for expanding the Abandoned Mine Lands Program into a large scale effort:

The health and safety needs are evident.

The skilled manpower and equipment resources in the private sector are available.

A large scale effort will have an impact on existing unemployment.

I estimate that for every million dollars expended in AML funds, 50 full-time jobs will be created. This is based on an estimate of 20 primary jobs per million expended and a local service employment multiplier of 1.5, which is derived from economic impact studies of adding basic employment. If $300 million is made available for state programs, approximately 15,000 jobs should be generated.

Instead of the unemployment multiplier now existant, we need employment multipliers. The Abandoned Mine Lands Program is capable of providing this strength to the region's economic base.

I would further note that this increased employment should directly reduce Federal expenditures for unemployment insurance in those states now borrowing from the Federal Treasury to meet such claims. There are now twelve coal states borrowing from the Treasury for unemployment payments. Four additional coal states have requested stand-by loans. (The complete list is included in the attachments.) If those employed in AML projects are drawn from the ranks of the skilled unemployed, the savings in unemployment benefits amount to approximately 20 percent of the Abandoned Mine Lands Program expenditure. In short, for every million dollars of Abandoned Mine Lands Program expenditures, approximately $200,000 less in annual unemployment benefits are paid to the 50 persons employed.

I want to pause here to highlight an irony. The Federal government requires states to pay interest when they borrow Federal funds to meet weekly unemployment obligations. Yet, the Treasury is not willing to pay the coal states any interest on the funds collected for the Abandoned Mine Lands Program.

While this Committee does not control the unemployment insurance program, it should be concerned with the lack of interst accruing on the AML funds. Interest payments, if permissible, would substantially reduce, if not eliminate, any need to extend the 15 year life of the reclamation fee in order to meet the program's needs.

I am confident that the states have the capability to undertake an expanded Abandoned Mine Lands program. Several western states have more than doubled their efforts from last year, and we have the capability to systematically expand our efforts again next year. Overall, the western states are capable of committing and pursuing $117 million of work in FY '84.

Need for Changes in OSM's AML Policies

In order to enhance the states' ability to implement a full Abandoned Mine Lands Program, some changes in the OSM's program policy are necessary.

Non-Coal Projects

The Abandoned Mine Lands Program is not a regulatory program imposed by the Department upon the states. It is the "carrot" which supposedly makes the title V regulatory program attractive. I am not sure that OSM fully understands this. For instance:

Montana has learned that mid-level Federal employees can override a governor's finding that proposed non-coal Abandoned Mine Land projects are justifiable in terms of correcting hazards to public health and safety. Such an incident is an insult to the states who are "partners" with the Secretary in implementing the provisions of the Surface Mining Act. OSM's action has resulted in a 40 percent reduction in Montana's program for the current year, reducing the potential of the current program to help alleviate unemployment problems.

This situation is documented in the attached letter from Governor Schwinden.

OSM's action concerns us, since all of the western states contain a number of hazardous non-coal mine sites that need attention under this program. It is inconceivable to me that Congress intended a governor to conduct lengthy arguments with mid-level Federal employees in order to receive the states' share of funding to undertake such projects.

I want to stress that these non-coal projects are funded from the states' share of the Abandoned Mine Lands Program monies.

Subsidence Insurance

Subsidence is one of the most expensive and damaging impacts resulting from underground coal mining. Subsidence is also one of the most unpredictable impacts. There is no identifiable time after mining when the threat of subsidence is clearly past, thus subsidence may occur long after the Abandoned Mine Lands Program has ended.

On the other hand, techniques for stablizing subsidence hazards are very expensive and very uncertain. The Bureau of Mines is now in litigation in Wyoming over whether certain subsidence prevention measures actually increased subsidence. With this in mind, the best approach may be to correct the subsidence impacts after occurrence.

Therefore, I propose to use some of Wyoming's Abandoned Mine Land program revenues to establish a subsidence insurance fund under the management auspices of the state. This fund would cover both the damages to public and private interests resulting from subsidence as well as provide funds for the correction of subsidence occurrences. Such a fund would cover all existing hazard zones in Wyoming.

Land users in these zones may well be subject to some insurance premium, depending on the nature of the land occupancy at the time of establishing the program and the subsequent improvements and changes over the years.

Using the Abandoned Mine Lands program monies to substantially underwrite a subsidence insurance program appears to be the best approach for addressing the uncertainties and cost of subsidence control within the present Abandoned Mine Lands Program.

Mr. Chairman, our reading of the Surface Mining and Reclamation Act does not reveal any provision which would preclude the Office of Surface Mining from making an Abandoned Mine Lands Program grant to any state for underwriting a subsidence hazard insurance fund. Since the Act does not specifically authorize such an approach to reclamation, it is understandable that there is some hesitancy on OSM's part to move forward.

I would hope that you urge the Office of Surface Mining to fund, under the current program, the subsidence insurance program I have suggested. Further, the states must control the program to avoid the OSM bureauracy.

States Establish Project Priorities

The Office of Surface Mining's second draft Abandoned Mine Lands policy still indicates that OSM is attempting to establish project priorities for the state-share funds. It appears that the policy, if not directly applied in the approval process of each state's annual project submission, will be indirectly applied in the allocation of the funds among the states.

The policy relegates non-coal reclamation projects, such as those proposed by Montana, to the lowest ranking possible--contrary to the legislative directive in Section 409 of the Act.

The policy and present OSM practice also reinforces the implementation of the priorities in Section 403 in a mutually exclusive and serial manner. In other words, all of priority one must be addressed before two, and so on. It is not clear to me that this rigid interpretation is what Congress intended, and if continued, we will lose opportunities for the beneficial use of the funds.

A written policy by the Office of Surface Mining that explicitly and unequivocally reaffirms the states' right to establish their own program and project priorities would address many of the current concerns we have with the program.

Congress should reinforce the concept that states with approved Abandoned Mine Lands Programs should be allowed to establish their own project priorities for state-share funded projects. This would be consistent with the broad policies of the Federal Act. This freedom allows us to tailor our Abandoned Mine Lands programs to effectively meet the specific needs and environmental circumstances in each state.

Projects Affecting Reserved Public Lands

There are mine damaged lands within or adjacent to reserved public lands, such as National Parks. We believe that if reclamation projects are proposed on such lands, consideration should be given to sharing project costs with Federal AML funds.

State Managed Research and Demonstration Projects

Title IV includes authority for supporting "research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques." (Sec. 403(4) of P.L. 95-87.)

I understand that this provision was added as a result of the uncertainties surrounding reclamation in the West and the states' need to address prospective mining and reclamation needs.

A number of western states have identified research and demonstration needs and are willing to move forward with this work.

Particular potential exists for Alaska to use this authority to address certain needs identified in the study authorized under Section 708 of the Act. Wyoming, North Dakota and Utah also have particular projects in mind. These projects would provide an opportunity for the states to work cooperatively with the mining industry and advance mining and reclamation practices.

This is not just a western issue. Critical unknowns exist concerning reclamation in the Eastern states, such as the construction and long-term stability of surplus spoil disposal areas.

The Office of Surface Mining should be encouraged to broaden their draft Abandoned Mine Lands policy to allow states to undertake such research and demonstration projects.

Conclusion

In closing, as illustrated in the attached letters, the Western Governors see the Abandoned Mine Lands Program as providing the opportunity to undertake the necessary reconstruction of our natural heritage--"the infrastructure of lands and waters." The need and justification for this effort rivals that of repairing highways, bridges and other public facilities. As an important ancillary benefit, the program will also provide the opportunity to take a positive step toward relieving the mining area unemployment problems.

This is probably one of the few existing public programs that can be significantly expanded to address valid environmental problems, utilize idle equipment and managerial resources, and put back to work the unemployed skilled workers. In addition, the Program will fit within the Administration's concerns of not creating make-work projects and dead-end opportunities.

I would urge you to continue the efforts you began last year, and ensure that the Program funds are returned to the states. We will never have enough money from this federal tax to reclaim the lands and water adversely affected by past mining practices. However, we should receive our entitled revenues to fund our priority projects. The Federal Act is clear that the tax should be used to reclaim abandoned mines, bringing employment and environmental benefits. The Act did not contemplate an idle, non-interest bearing account within the Federal Treasury.

Thank you for your consideration of this important matter.

Attachments

1. Letters from Western Governors
    - Hon. Richard D. Lamm, Colorado
    - Hon. Ted Schwinden, Montana
    - Hon. Scott Matheson, Utah
    - Hon. Tony Anaya, New Mexico
2. Letter from Bruce Hagen, President of North Dakota Public Service Commission.
3. WESTPO Resolution, November 21, 1983
4. Gov. Herschler's letter to colleagues, February 3, 1983
5. Listing of states borrowing Federal funds for meeting unemployment claims, January, 1983
6. Change in Employment in the Coal and Metal Mining Industries, November 1981 - November, 1982
7. Changes in Employment in Coal and Metal Mining Industries from Recent Year's Highs to November, 1982

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471

Richard D. Lamm
Governor

February 10, 1983

Congressman Morris K. Udall, Chairman
Committee on Internal and Insular Affairs
United States House of Representatives
Washington, D.C. 20510

Dear Congressman Udall:

I want to take this opportunity to reaffirm my support of the attached WESTPO resolution calling for an acceleration and full implementation of the Abandoned Mined Lands Program in order to meet critical environmental problems and help alleviate the persistent unemployment problems in the mining areas of the State. I recognize that Congress provided additional funding for this program last December, but substantially more needs to be done.

In Colorado, we have increased substantially the size of our program in the last year to the present level of $5.5 million. It is not clear that we will receive these funds from the Office of Surface Mining, however. Next year we could operate at twice this level.

Along with the hard-hit coal industry, where current unemployment has reached 25%, Colorado's non-fuel mineral industry is in dire straits. Nearly one-half of the miners are out of work and 45% of the people who were working in the summer of 1981 are now unemployed.

Significant abandoned mined land and water problems exist in the coal and non-coal mine areas in Colorado. These include subsidence, burning waste banks, toxic wastes leaching from mine dumps, and open shafts on intensively-used public lands, to name a few. These problems can be addressed in the coming year, thus utilizing idle resources in the mine areas, if:

1. States are allowed to establish project priorities for their own AML programs;
2. Federal AML discretionary funds remain available to assist in those projects having substantial benefits on public lands; and
3. Funds are made available early in the fiscal year so project development can proceed apace.

Please let me know if there is additional information I can provide in order to further this effort.

Sincerely,

Richard D. Lamm
Governor

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

February 12, 1983

The Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C 20515

Dear Chairman Udall:

Thank you for the opportunity to comment on the Abandoned Mine Lands (AML) Program and how it might serve a dual purpose in putting unemployed miners and construction workers back to work, and eliminating many potentially dangerous hazards remaining from past mining practices.

Like the coal mine regulatory program authorized by the 1977 Surface Mining Control and Reclamation Act, the AML program provides a lead role for states. Since August, 1979, the Montana Department of State Lands, (DSL) has inventoried, engineered reclamation, and completed construction projects on abandoned coal mines in the state. The Montana Abandoned Mine Reclamation program was approved by the Office of Surface Mining (OSM) on October 15, 1980. On January 29, 1982, DSL requested $8,646,491 from OSM to fund the reclamation of 18 abandoned mines. Thirteen of the projects were to reclaim abandoned coal mines for a total of $5,287,692.00; the remaining $3,358,799.00 was requested for non-coal mine projects. On September 28, 1982, OSM approved all of the proposed coal projects but denied monies for the five non-coal reclamation projects.

The National Abandoned Mine Reclamation program is authorized by Public Law 95-87 entitled, "Surface Mining Control and Reclamation Act of 1977." Title IV of this Act defines the "Abandoned Mine Reclamation" program, and Section 409 specifically addresses non-coal mine reclamation. Montana interprets this section to mean that the states can perform reclamation on non-coal sites if the following criteria are met:

409(a) - the non-coal project is requested by the Governor,

409(b) - funds for non-coal reclamation must be the state 50% share of the fund, and

409(c) - "reclamation projects [must be] related to the protection of the public health or safety."

The five non-coal sites qualify under the criteria. OSM's position is outlined in a letter from Mr. Bill Schmidt, Assistant Director, Program Operations and Inspection, dated October 4, 1982. According to his letter, the reason for the denial was "...the lack of data to corroborate Montana's contention that the proposed sites constitute a threat to public health and safety." Two of the non-coal sites, Bannack and Elkhorn, may require additional documentation, but the Alta Mine, Colorado Tailings, and McLaren Mill have sufficient corroborative data.

Data from our Montana Water Quality Bureau and the U.S. Environmental Protection Agency clearly documents and corroborates DSL's position on the non-coal sites. The Alta, Colorado Tailings, and McLaren Mill Tailings projects are necessary for the protection of human health and safety. The sites have been studied extensively for many years by state and federal officials. The Colorado Tailings site has been described as the worst problem on Silver Bow Creek. Silver Bow Creek, incidentally, is rated #1 on the EPA Super Fund List nomination for Montana and #24 nationally!

Title IV, Section 405, Subsection (d) states that the Secretary, "shall grant to the state exclusive responsibility and authority to implement the provisions of the approved program." Montana has an approved Abandoned Mine Reclamation program which includes acid mine, non-coal reclamation projects. Montana is capable of determining health or safety hazards. OSM's action does not recognize the ability of state and other federal officials, who deal daily with health and safety issues, to identify and resolve problems.

In order to assure that the purposes of Title IV are carried out, I recommend:

(1) State AML project priorities be fully honored by OSM;

(2) OSM's role with respect to state AML projects be primarily directed at post-project oversight. Pre-project review should be limited to the consideration of a project's qualification under the approved state AML program;

(3) Non-coal projects requested by a governor under an approved AML program should be evaluated and reviewed in the same manner as coal projects. Site visits and comparable level investigations would be a part of the post-project oversight.

The AML program offers the states and our citizens the opportunity to correct previous environmental mistakes. In Montana, we have been able to work cooperatively with all citizens and industry groups in developing and implementing the state program. Because of OSM action, however, construction projects in Montana totaling over $3 million have been eliminated this year.

In these difficult economic times, Abandoned Mine Reclamation projects would be a welcome shot in the arm for Montana's depressed construction industry.

In November, 1982, I joined with Governor Herschler in supporting a Western Governors' Policy Office resolution, which calls for full funding of state AML programs. Western Governors and Western states need your help to get the AML program back on line and our people back to work.

Sincerely,

Ted Schwinden

TED SCHWINDEN
Governor

cc: MT Congressional Delegation
James R. Harris, Director, OSM
Rich Bechtel

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STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

SCOTT M. MATHESON
GOVERNOR

February 10, 1983

The Honorable Morris K. Udall
Chairman
Committee on Interior and
  Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Udall:

This letter supports Governor Ed Herschler's (WY) testimony concerning the full funding of the Abandoned Mine Lands (AML) program. Significant program efforts are warranted, at this time, in order to address the dual problems of rehabilitation of mined lands and the severe unemployment in coal mining areas.

Last year, the Senate Appropriations Committee action and the subsequent Conference with the House, resulted in adding approximately $50 million to the AML program in order to meet both environmental and employment problems. That increase has allowed the State of Utah to initiate its AML program. We expect to have $1.5 million in projects underway this summer.

Mined land rehabilitation needs here in Utah are great. In the next fiscal year, we could have a program of nearly $2 million implemented, if funds were made available. I hope your hearing will result in sufficient funds being made available to all states.

This level of effort in Utah's mining areas should help offset the loss of 1,400 coal mining jobs experienced over the last seven months.

Mining employment in Utah appears particularly bleak. Over 1.5 million tons of coal are presumably stockpiled at the mines ready for shipment. Re-employment, at these mines, of idled workers will not occur until the stockpiles are depleted and the slack in present production is taken up by increased demand. Since we do not expect this to occur early in an economic recovery, AML funds expended during FY '84 will not compete with mining capabilities.

In order to facilitate the implementation of the AML program by the states, the following concerns should be addressed:

a) Priorities for reclamation should be established by each state for its own AML programs;

b) Federal AML funds should be included in those projects having significant benefits on public lands and their use;

c) States should be advised early in the fiscal year of the amount of funds that will likely become available for project use;

d) The principle role of OSM in the AML program should be one of post-project oversight in those instances where the state carries out its work.

With respect to the second point above, I recommend that OSM is provided sufficient federal AML funds and appropriate congressional directive to address remaining mine land impacts in the high-use recreational areas of Utah.

Sincerely,

/s/

Governor

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

TONEY ANAYA
GOVERNOR

February 11, 1983

The Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Udall:

I fully support your efforts to expand the Abandoned Mine Land Program (AML). The expansion of the Program would alleviate certain critical environmental problems and put some unemployed workers back to work.

Following your efforts, along with the Western Governors, to make additional funds available we expanded our Program for the current year.

If the program is expanded further we would be able to use up to five (5) million dollars next year to attack both unemployment and health and safety hazards.

I believe that a few changes in OSM policy would improve the Program and help the states more efficiently get the money working in the communities. Specifically, for those states with approved programs, the states should be allowed to set their own priorities. Additionally, where projects are significantly affected by hazards on Federal land or where Federal lands would be improved by AML projects, the Federal government should cost share these projects. The Secretary of the Interior's Discretionary Fund should be redefined to assure that funds are available for cost sharing.

New Mexico, through the Energy & Minerals Department (EMD), will be working with the Navajo Nation by offering our regulatory and reclamation expertise on the Reservation. I think it would be appropriate to have AML Secretarial Discretionary Funds available for projects on the Reservation prior to the adoption of a full Navajo regulatory program. As you well know, the unemployment picture on the Reservation is extremely serious. With AML fund assistance and with our help a small part of the unemployment problem can be relieved and some environmental problems can be mitigated.

Please let me know if I can help in this effort.

Sincerely,

TONEY ANAYA
Governor

Public Service Commission
State of North Dakota

COMMISSIONERS
Richard A. Elkin, President
Bruce Hagen
Leo M. Reinbold
Secretary, Janet Sauter

Capitol Building
Bismarck, North Dakota 58505
(701) 224-2400

February 11, 1983

The Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Udall:

The North Dakota Public Service Commission (NDPSC) has jurisdiction over the abandoned mine lands program in North Dakota. The NDPSC is an elected body constitutionally separate from the North Dakota's Governor's office. However, late last year the NDPSC supported the Western Governor's resolution calling for a significantly expanded abandoned mine lands program. The NDPSC also contacted members of North Dakota's congressional delegation as well as the House and Senate Appropriations Committees to support the Western Governor's efforts to increase funding of this program.

It is appropriate that you are holding a hearing on this concept, because the need still exists for continued expansion of the abandoned mine lands program in the coming year.

Given adequate funds for all the states, we will be able to at least re-double our reclamation efforts next year. Our expanded program this year is operating at the $2 million level.

In order to enhance the states' ability to meet expanded program objectives, it would be useful for Congress to encourage the following policies in the administration of the AML program:

1) States should be able to establish their own project priorities within their approved AML program and the provisions of Title IV of the Surface Mining Act;

2) States should be able to include appropriate research and demonstration projects in their AML programs, as authorized by Sec. 403(4) of the Surface Mining Act; and

3) Federal discretionary funds should be committed to reclamation efforts coincident with the State-share funds.

With respect to the first point, such an explicit policy will allow each state to tailor its AML program to meet the specific needs and environmental problems of the state. Such an approach would help accommodate differences among states in program implementation.

The present draft OSM policy on the AML program reserves entirely to OSM the ability to undertake R&D projects. As we have expressed to them, we believe this is more restrictive than provided in the Act. In fact, the states, in conjunction with operators and other interested groups, are in a more advantageous position to identify, formulate, and manage the research and demonstration projects necessary for better reclamation. Such an approach helps assure that the findings of this applied work are implemented at the state level. Our libraries are full of research reports done by others. It's difficult to assimilate and transfer findings from such "remote" R&D into current operational practices. One way to enhance utilization of R&D results is to have the work managed or conducted by the eventual users.

Federal AML funds can beneficially supplement state efforts. For instance, a state reclamation objective with respect to particular projects might be to merely stabilize the lands; e.g., address the environmental degradation. In some instances, additional federal funding might add a disproportionately greater benefit, such as reclamation to a higher agricultural use, or include training or research with state reclamation efforts. Consideration should be given to making adequate Federal AML funds available so that concurrent Federal committments can be made as states implement projects. I think each state would be willing to incorporate some additional funds in their projects in order to enhance reclamation results.

So you may know, one of the first AML projects implemented under Title IV was for reclamation work near Dickinson, ND. We included a training component with this project with great success.

It is clear to us from this experience that the AML program can meet both human needs as well as those of the environment. The NDPSC is more than willing to expand its program as much as possible at this time of high unemployment, thus meeting other human needs.

Please let me know if I can provide any additional information.

Sincerely,

Bruce Hagen

Bruce Hagen
President

LLS/sku

WESTPO RESOLUTION 82-026

November 21, 1982
Colorado Springs, Colorado

Sponsor: Governor Ed Herschler
Subject: Creation of jobs and the reclamation of abandoned mine lands

A. BACKGROUND

1. The federal Surface Mining Control and Reclamation Act of 1977 established a program for the reclamation of abandoned coal and non-coal mines and set a fee on all coal produced to finance the program. The law requires that at least one-half of all funds collected in a state be returned to the state of origin.

2. Currently, miners in the coal, uranium, copper, molybdenum, and other extractive industries are out of work because of slack demand. Equipment and other private sector resources that can be used to reclaim abandoned mines remain idle.

3. The federal government has collected but not released funds needed to achieve the reclamation of abandoned mines intended by the Surface Mining Act.

4. Western states have established programs that have identified specific abandoned coal and non-coal mines that need to be reclaimed and western states are ready to implement projects to achieve such reclamation.

B. GOVERNORS' POLICY STATEMENT

1. We request that the Congress and the President appropriate at least the states' share of abandoned mine land funds collected but not thus far distributed to states. We request that the Congress and the Administration release immediately to states their share of the funds to undertake coal and non-coal reclamation projects identified by the states, thereby putting unemployed miners back to work, utilizing idle resources in the private sector, achieving the environmental objectives of the Surface Mining Act, and eliminating many immediate threats to the health and safety of our citizens.

C. MANAGEMENT DIRECTIVE

1. Direct that this resolution be distributed to the House and Senate Appropriations Committees, the Senate Energy and Natural Resources Committee, the House Interior and Insular Affairs Committee, the Secretary of the Interior, and the President.

DISPOSITION: (X) Approved ( ) Disapproved ( ) Tabled

Yeas: Unanimous

Nays:

Date of Action: November 21, 1982

WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

ED HERSCHLER
GOVERNOR

February 3, 1983

Honorable John Y. Brown, Jr.
Governor of Kentucky
State Capitol
Frankfort, Kentucky 40601

Dear Governor Brown:

One of the hardest hit economic sectors in the current recession is the mining industry--coal and non-fuel minerals alike. Not only is the approximate 20 percent unemployment in the coal mining sector leading the national average of 10.8 percent, but significant amounts of the mining, industry and contractor equipment remain idle.

It is not likely that this situation will improve this year. Any increased mining activity and related employment will lag behind a general economic upturn due to substantial stockpiles of coal and other minerals which must be depleted prior to production being expanded beyond current levels.

However, there are actions which we, as governors, can take to help alleviate this mining unemployment situation. Specifically, we can join together in efforts before Congress and the Administration to ensure that we receive our entitled revenues for reclamation work at abandoned mines.

As you may know, the Federal Surface Mining Act establishes a program to reclaim abandoned coal and non-coal mines and sets a fee on all coal produced to finance the program. The law requires that at least half of this reclamation fee be returned to the state of origin, for reclamation projects to repair past mining damage.

These orphaned lands adversely affect both the economic growth and environmental quality in many regions of the country. Although I boast that Wyoming is not a present-day Appalachia, we have open pits, mine fires and subsidence problems which seriously threaten private property, public health and safety, and the environment. Reclamation work not only will cure these problems, but it will utilize idle mining industry resources: labor, equipment, engineers and managers.

We must not miss this opportunity to bring our message before Congress and the Administration that we need full and immediate funding to meet all project requests. Last November, the ten Western governors meeting in Colorado Springs unanimously passed a resolution calling for an increase in funding for this program. Congress increased appropriations for the current fiscal year. However, more needs to be done, both from individual states and other regional organizations.

I hope that you will personally support efforts this spring in Congress to assure that these funds are made available. We will never have enough money from this federal tax to reclaim all lands and water adversely affected by past mining practices. But we should receive immediate funding for our priority projects. The Federal Act is clear that the tax should be used to reclaim abandoned mines, bringing employment and environmental benefits, not that the funds remain idle in a non-interest bearing account within the Federal Treasury.

Thank you for your consideration of this matter. With best personal regards, I am

Yours sincerely,

EH:nfp

Kentucky, 12/83	John Y. Brown, Jr.	State Capitol, Frankfort 406
West Virginia, 1/85	John D. "Jay" Rockefeller, IV,	State Capitol, Charleston253
Pennsylvania 1/87	Dick Thornburgh	State Capitol, Harrisburg 17120
Illinois 1/87	James R. Thompson	State Capitol, Springfield 62706
Virginia 1/86	Charles S. Robb	State Capitol, Richmond 23219
Ohio 1/87	Richard S. Celeste	State House, Columbus 43215
Indiana 1/85	Robert D. Orr	State Capitol, Indianapolis 46204
Montana 1/85	Ted Schwinden	State Capitol, Helena 59620
Texas 1/87	Mark White	State Capitol, Austin 78711
Alabama 1/87	George Corley Wallace	State Capitol, Montgomery 36130
Colorado 1/87	Richard D. Lamm	State Capitol, Denver 80203
New Mexico 1/87	Toney Anaya	State Capitol, Santa Fe 87503
North Dakota 1/85	Allen I. Olson	State Capitol, Bismarck 58505
Utah 1/85	Scott M. Matheson	State Capitol, Salt Lake City 84114
Arizona 1/87	Bruce E. Babbitt	State House, Phoenix 85007
Tennessee 1/87	Lamar Alexander	State Capitol, Nashville 37219
Missouri 1/85	Christopher S. (Kit) Bond	State Capitol, Jefferson City 65101
Oklahoma 1/87	George Nigh	State Capitol, Oklahoma City 73105
Washington 1/85	John Spellman	State Capitol, Olympia 98504
Maryland 1/87	Harry R. Hughes	State House, Annapolis 2140
Kansas 1/87	John Carlin	State Capitol, Topeka 66612
Arkansas 1/85	Bill Clinton	State Capitol, Little Rock 72201
Iowa 1/87	Terry Branstad	State Capitol, Des Moines 50319
Alaska 1/87	William Jennings Sheffield	Pouch A, Juneau 99811
Georgia 1/87	Joe Frank Harris	State Capitol, Atlanta 30334

LISTING OF STATES CURRENTY BORROWING FROM FEDERAL GOVERNMENT FOR MEETING UNEMPLOYMENT INSURANCE CLAIMS

January, 1983

Alabama*
Arkansas*
Colorado*
Connecticut
District of Columbia
Illinois*
Iowa*
Kentucky*
Louisiana
Michigan
Minnesota
Ohio*
Pennsylvania*
Tennessee*
Texas*
Virginia*
Virgin Islands
West Virginia*
Wisconsin

* Have AML Balance in Fund

STATES REQUIRING STAND-BY LOAN FROM FEDERAL GOVERNMENT FOR MEETING UNEMPLOYMENT INSURANCE CLAIMS

(Partial Listing)

Utah*
Indiana*
Montana*
North Dakota*

* Have AML Balance in Fund

Change in Employment in the Coal and
Metal Mining Industries
November 1981 - November 1982

For Selected Western States

State	Employment (in '000s) Nov '81	 Nov '82	Number of Jobs Lost	% of Jobs Lost
Arizona	25.0	15.6	9.4	38
Colorado	17.1	11.3	5.8	34
Montana	11.9	9.8	2.1	18
New Mexico	14.9	10.2	4.7	32
North Dakota	11.8	8.3	3.5	30
Utah	13.9	10.6	3.3	24
Washington	3.2	3.0	.2	6
Wyoming*	13.3	9.1	4.2	32
Region Total	111.1	77.9	33.2	30
SIC-10 U.S. Met	99.9	59.2		
SIC-11,12 Coal	255.4	222.0		
	355.3	281.2	74.1	21

Data: Comprised of Metal (SIC-10) & Coal (SIC-11,12 and non-metalic) Mining Employment as reported in LABSTAT Series, Bureau of Labor Statistics, U.S. Dept. of Labor.

* Comprised of Metal (SIC-10) & Coal (SIC-12) as prepared by Employment Security Division, State of Wyoming, Casper, February, 1983.

Changes in Employment in Coal and Metal Mining Industries From Recent Year's Highs to November, 1982

State	(Previous High)	Nov'82	Change	% Loss
Arizona	25.6	15.6	-10.0	39
Colorado	18.4	11.3	- 7.1	39
Montana	12.3	9.8	- 2.5	20
New Mexico	17.4	10.2	- 7.2	41
North Dakota	11.8	8.3	- 3.5	30
Utah	15.0	10.6	- 4.4	28
Washington	3.3	3.0	- 0.3	9
Wyoming	19.2	15.6	- 3.6	19
Region	123.0	84.4	-38.6	31
U.S.	370.9	281.2	-89.7	24

38,600 jobs lost over 3 years
29,900 jobs lost over last 12 months
8,700 jobs lost in preceding 2 years

Data: Comprised of Metal (SIC-10) & Coal (SIC-11,12 and nonmetalic) Mining Employment as reported in LABSTAT Series, Bureau of Labor Statistics, U.S. Dept. of Labor.

Note: Wyoming data not adjusted to more recent state figures contained in table for November 1981 to November 1982.

Senator **Warner**. Perhaps you addressed this earlier when I was absent, but OSM said they were funding at a level that States can effectively and efficiently utilize. You disagree with that?

Mr. **Gallagher**. We submitted a request and Mr. Juntunen can follow up, we submitted a request for over $8 million and only $5 million of that, a little over $5 million, was actually awarded. Five projects were denied on the ground that they did not pose a threat to public health or safety.

We feel that those did in fact pose a threat to the public health and safety for a number of reasons. One of which, probably the most important of which, is that the Colorado tailing site happened to be the No. 1 EPA Superfund site in Montana, and rated number 24 nationwide.

Senator **Warner**. You've made a record on that. I thank you and the Governor for enabling you to come and be present.

Mr. **Gallagher**. Would you allow me 30 seconds to briefly summarize?

In closing, I want to draw your attention also to letters of support from each of the five western Governors and one western public service commissioner. I request that these letters along with the February 17, 1983, testimony of Gov. Ed Hirschler before the House Interior Committee be made a part of my testimony and included with the printed record. Additional details on a number of points that I raised are included in Governor Hirschler's testimony.[1]

Senator **Warner**. Thank you very much.

Mr. **Rosenbaum**. In our written testimony we touched on three principal points. The first has to do with the appropriations process. We are concerned that insufficient appropriations are going to be available in the current fiscal year to honor the grant requests which you'll be receiving.

I might touch briefly on the job aspect of the AML program. We believe that the coal operators have the capability to perform most of this reclamation. As a matter of fact in Kentucky we have a State law that requires that a minimum of 20 percent of the funds which we receive be dedicated specifically to projects to be constructed by small coal operators. That program is in place.

We touched on the trust fund issue. We believe the trust fund should be operated as a trust fund, and we had a concern on the allocation of Federal discretionary funds and made a proposal to address that.

I'll be glad to answer any questions you have.

Mr. **Wahlquist**. I have five points I would briefly like to summarize.

First, is the fact that we currently have approximately 25,000 unemployed coal miners in the State of West Virginia, which is about 33 percent of the labor force.

Second, is that we have recently applied for a grant of $20 million for AML work and it is critical for the current year for that grant to be approved in a timely manner so that work can be initiated during the summer season before we run into weather problems come fall.

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[1] The additional material submitted for the record by Mr. Gallagher appears following his prepared statement.

Third, the State of West Virginia would strongly support the ideas contained in Congressman Rahall's bill which was introduced into the House yesterday, H.R. 1622, that State money should be available to the States.

Fourth, we are concerned about the fact that this fund does not draw interest. This is by statute a trust fund. All other Federal trust funds, including the Superfund which is also funded by a tax on the industry, draw interest. And the question I guess is, is a statutory change necessary in order for this fund to draw interest? And if so we feel that ought to be implemented.

Fifth, in a little bit of conflict, I guess, with what Mr. Brown had said, we would feel that in some ways the priorities are almost too clear, to the extent that there is relatively little discretion allowed in the way the priorities are set, and we feel there is a need for greater latitude in the way the priorities are set.

Currently, because of the long history of mining in the State of West Virginia, our efforts are tied up completely on priority one and occasional priority two projects which deal primarily with refuse areas, subsidence and close-in of—underground mine entries. These create relatively few jobs. They benefit relatively few people, and yet they consume a great deal of money.

We would like to be able to, along with undertaking some of these projects, take some priority three projects which are the ones that really undertake the restoration of land and water. And the 100,000 acres of land that we referred to as being affected by past mining practices in West Virginia are really being dealt with very little in the priority one and two projects. And the fact that the fund is already one-third of the way through, we will probably never get to those 100,000 acres of land in the term of this program.

Finally one comment, and that is that we have about 25 people full time on the AML program now, and it has taken the better part of that staff 6 to 8 months to put together this last grant application. So I would feel the gentleman from Montana has done very well if he got his put together with three people. We have found that it takes a tremendous amount of time to put together a grant application.

Senator **Warner**. Under the Rahall proposals with the money directed toward the States, what role would be played by the Federal Government over and above being tax——

Mr. **Wahlquist**. It is my understanding we would still need to submit the projects for approval, that there would still need to be environmental assessment, there would still need to be the priority evaluation, and those things would still need to go before OSM for their approval before the project could be initiated.

The thing that would not be nearly as tied up would be the actual grant, the letter of credit, and those kinds of things that involve the flow of money.

Senator **Warner**. Gentlemen, I thank you very much.

We will now hear from the panel consisting of the representatives of the National Audubon Society, Environmental Policy Center and Fort Peck Tribal Council.

Thank you for your patience.

STATEMENT OF HOPE M. BABCOCK, DEPUTY COUNSEL AND DIRECTOR, PUBLIC LANDS AND WATERS PROGRAM, NATIONAL AUDUBON SOCIETY, WASHINGTON, D.C.

Ms. **Babcock.** My name is Hope Babcock. I'm with the National Audubon Society. I thank you for the opportunity to appear here today on the administration of the abandoned mine lands program under the Surface Mining Reclamation Control Act.

I must confess before I start, I testified before this committee in the past. I felt a little bit like a dragon that is pictured in the recent addition of the New Yorker.

Senator **Warner.** Is that for the subcommittee or the whole committee?

Ms. **Babcock.** I'm getting on dangerous ground. The whole committee.

Senator **Warner.** Well I'm not totally at fault.

Ms. **Babcock.** Not at all. Anyway, the dragon is addressing a room full of knights and he's thanking the knights for inviting him to make a speech and noting that while they've had significant differences in the past he views his presence there as a major breakthrough. I would make these comments with reference to the administration of title V of the surface mining program and not with respect to title IV because I think we are largely in agreement.

The environmental community supports a fully funded, creatively and vigorously administered abandoned mine lands program. It is our view that the current administration has given an overly cramped interpretation of that portion of the statute.

Consistent with that position we support implementation of the plain meaning of section 409, namely that AML funds can be expended on projects. We too are appalled at the agency's response to the Montana situation. We disagree vehemently with Director Harris' position that Superfund dollars should be used at that site. These two funds are simply not interchangeable. That was not the intent of Congress.

If we've learned anything in the past years with regard to the hazardous sites, there is simply not enough money in either fund to address all of these types of problems.

Now after I testified before the House last week on this program, OSM called me to ask me to change my testimony that I was planning on giving here today, citing by way of example an error in my testimony where I said that the agency had never approved a noncoal site for use of AML funds. And indeed they had approved two such sites in the state of New Mexico.

My research indicated that they were correct and I was incorrect. However, those two sites involved moneys not for on-the-ground reclamation, but rather in the one situation for research into appropriate reclamation techniques for noncoal mining and for the other project, the establishment of a reclamation resource center, the funds to be used for both coal and noncoal projects.

Now I find it difficult to reconcile the position of the agency taken in Montana and that they appear to have taken in New Mexico, and to reconcile both of those positions with what Congress intended in section 409. Saying, this does not mean that OSM should lose sight of the fundamental purpose behind title IV, namely reclamation of abandoned coal sites. Perhaps if the agency published criteria to describe what they mean by a hazardous situation, that might help the States identify sites which would be appropriate for funding under section 409.

The second point I make in my written testimony is that we feel the agency has adopted an overly restrictive interpretation of the priorities contained in section 403 and that there is considerable flexibility in the word reflect which is used in that section of the law.

Now saying that, we do not again mean to be saying that the agency should take a totally hands-off posture with respect to the administration of the AML program, as for example, is envisioned in Congressman Rahall's bill which we oppose for the reasons set forth in detail in my written testimony. However, for a change we are asking OSM to exercise a greater degree of flexibility and discretion as opposed to the overly flexible interpretation we think they are taking with title V.

My third point I make in my written testimony is that we oppose the $4.6 million decrease in the Federal share of the AML program. The reasons that I oppose it are set forth in my written testimony. We are especially upset by the further cuts in the RAMP program, and the only point I would like to make out of my written testimony is that we view the RAMP program as the only mechanism at present to identify and to deal with nonpoint source pollution coming off of mine sites, and until we are able to amend the Clean Water Act to address that problem we will continue to have unacceptably high levels of soil loss off of our farm lands and water quality degradation problems.

The fourth point I would like to make here today is that while we agree with those who criticize the agency for its administration of the AML program, we do not join with those who advocate opening up the statute as a solution. For example, Congressman Rahall's bill.

We view the problems raised here today by ourselves and others as one of faulty administration, not a faulty law. We believe these problems can be corrected through the oversight process as is being done here today and through use of the appropriation process. For example, this committee could request the agency to report back to it on a quarterly basis on its progress in administering specific State grants.

I don't think anybody who is part of the legislative history and the development of this statute or in the legislative history which occurred in 1979 when it looked like it was going to be amended again, relish the opportunity or the invitation of participating in another round of those types of battles. Therefore, I was pleased to hear Director Harris state today that neither he nor the Secretary want to open up the law this year, but then almost instantly dismayed when I thought I heard him say that he was instead advising the coal producing states on how they might seek to amend the law.

Now with regard to the specific failure of the Department to implement a program under title V on Indian Lands and thus enable the tribes to receive AML funds, we are in complete sympathy with the position of the tribes on this issue. However, we think that the former getting premacy under the Surface Mining Act can be handled separately from the statute itself, perhaps in separate legislation, and that the latter receiving AML funds could proceed with reclamation on their tribal lands can be addressed through use of the Secretary's discretionary funds and particularly focusing on section 402(g) which would allow him to increase the amount of money he might be able to give the tribes.

We also don't think that the act needs to be opened up to allow interest to accrue on the fund. We do think that was the congressional intent and that could be made clear in the report.

Senator **Warner**. You're very succinct and to the point.

The question I have first in mind, you're quite explicit in saying whereas no legislative requirements are needed at this time, I'm puzzled when you said it's due to faulty administration.

Now do you want to trace that back how many years, or where at?

Ms. **Babcock**. That's a fair question and at this point if I had a hat on I would hold it in my hand. I think that two administrations have been extremely lax in administering this program. I think both of us could probably make excuses for the negligence that we viewed this program and how we actually tried to proceed. Our negligence, it was the failure to get Federal funds out. We had those funds. We weren't talking about State grants then because you didn't have State programs and you therefore did not have state AML programs. We were extremely tardy. I guess I would like to beat on this administration a little harder than I want to beat on my own back. I think they've had enough time to correct our errors, and that they should be doing a better job of it than they are now currently doing.

Senator **Warner**. Thank you.

[The prepared statement of Ms. Babcock follows:]

TESTIMONY OF HOPE M. BABCOCK
DEPUTY COUNSEL AND DIRECTOR OF PUBLIC LANDS AND WATERS PROGRAM
NATIONAL AUDUBON SOCIETY
BEFORE THE SENATE SUBCOMMITTEE
ON ENERGY AND MINERAL RESOURCES
FEBRUARY 24, 1983

Good Morning Mr. Chairman and distinguished members of this Committee. My name is Hope M. Babcock. I am Deputy Counsel and Director of the Public Lands and Waters program for the National Audubon Society. I am delighted to be here today to testify on the abandoned mined lands program of the Surface Mining Reclamation and Control Act of 1977.

The National Audubon Society is a non-profit organization of nearly one-half million members dedicated to the wise use and conservation of natural resources and protection of the environment. Audubon has been an active participant in the implementation of Title V of the Surface Mining Act, but has only recently turned its attention to the enormous potential for mitigating the adverse impacts associated with surface coal mining operations contained in Title IV of that Act.

As you know, Title IV of the Surface Mining Reclamation and Control Act of 1977 establishes a federal trust fund, known as the Abandoned Mined Lands Fund, accumulated through a tax on each ton of coal produced by coal operators since passage of the law. Distributed through annual appropriations, the fund is evenly divided between state and federal programs, the latter to be spent at the discretion of the Secretary of the Interior for clean up of selected abandoned mines nationwide. One-fifth of the monies in the fund can be transferred by the Department of the Interior to the Secretary of Agriculture to promote soil conservation and development of water resources on orphaned rural mined lands. This program is known as the "RAMP" program.

The purpose of the Fund is the protection of public health, safety and property from the adverse affects of coal mining operations and the restoration of land and water resources which have been previously degraded by coal and non-coal mining operations and subsequently abandoned. Monies from the Fund may also be spent on research as well as on repairs to public facilities, like utilities or roads, which have been adversely affected by coal mining operations.

States can only receive their share of AML funds when they have an approved surfacing mining regulatory program under Title V of the Act and an approved state reclamation plan under Section 405.

For a variety of reasons, some of merit and others less so, the abandoned mined lands program has not received the attention it deserves from the environmental community. There is much in the AML program, not the least of which is its potential to correct serious environmental problems created by poor mining practices in the past, to recommend it to our attention. The fact that you have two representatives from the environmental community appearing before you today is testament to the greater attention that we think the program deserves.

Although there are many aspects of this program on which I could submit testimony today, I would like to confine my remarks to three areas of concern to the environmental community. These are: (1) the current interpretation by OSM of Section 409 of the Act; (2) proposed FY 84 decreases in the Federal share of the AML Fund, including cuts in the RAMP Program; and (3) proposed legislation to amend Title IV.

Section 409

Section 404 of the Act states that only lands and waters adversely affected by coal mining operations are eligible to receive reclamation or drainage abatement expenditures. Section 409, however, authorizes the Secretary to expend monies from the Fund on abandoned non-coal sites which the Governor of a State advises the Secretary constitute a hazard to public health and safety. Sec. 409(c) (30 U.S.C. 1239(c)). Expenditures under Section 409 are restricted to the state's share of the Fund. Section 409, therefore, by its terms, is a specific exception to the limitation contained in Section 404 with respect to eligible lands.

Despite the plain meaning of Section 409(c), the current Office of Surface Mining has taken the legal position that there is "no basis in the legislative history of Section 409 to justify a conclusion that Congress intended to allow funding for reclamation on non-coal mined lands and waters abandoned after August 3, 1977." 46 Fed. Reg. 60778 at 60783 (1981). Consistent with this interpretation, last fall, OSM deferred a request, the first of its kind to be filed with the agency by a state, for AML funds for three non-coal projects, one of which was listed by the U.S. Environmental Protection Agency 24th out of over 400 of the worst toxic waste dump sites nationwide. The agency claimed that it lacked information about the hazardous nature of the state. (Since that time I have been advised by OSM that they have funded two non-coal projects in New Mexico. However, one of those projects is for a study of how to reclaim a non-coal site and the other for a resource center, which would include information on coal projects.). In our opinion, and I would hope in the opinion of the members of this Committee, the plain language of Section 404(c) specifically contradicts this interpretation of the law.

While reclamation of lands adversely affected by coal mining must remain a priority of the AML program, there is no reason, nor did Congress intend, that upon a showing of public health and safety, a portion of these monies could not be expended on addressing hazards associated with abandoned non-coal sites. The AML Fund, with the exception of Superfund, remains the only source of federal money for states to use to begin to address the environmental and health and safety problems associated with these sites. Further, since AML funds can be used for research and demonstration projects, the fund offers a unique opportunity for development of new techniques and procedures for correction of some of our most difficult and troublesome mining problems which are not now under any federal reclamation standards.

I would like to add just one note of caution before this Committee directs OSM to correct its interpretion of Section 409; namely, that this Committee should satisfy itself that (1) the existing controls in Section 409 can prevent the AML Fund from being over-used for non-coal purposes, remembering that orphaned coal mined lands are still the main focus of the AML program, (2) monies are actually being spent on on-the-ground reclamation at these sites, and (3) monies are being spent in a way which achieves maximum return for the federal dollars in the form of increased understanding of and approved techniques for achieving reclamation at non-coal mine sites.

OSM FY 84 Budget

Despite a proposed increase of $61 million in state AML reclamation funds, OSM's FY 84 budget shows a decrease of over $4.6 million in monies for federal AML reclamation projects. This decrease has been proposed by the agency despite specific action by this Committee last year adding $5.6 million to OSM's proposed FY 83 federal AML program. While we applaud the increase in monies for the state share of the AML program, we deplore and find totally unnecessary the decrease in the federal share. The rationale given by the agency is that the states will assume the major role in abandoned mined reclamation now that all but a few states have received approval of their AML programs.

Section 402 of the statute makes it clear that the Secretary is to retain 50 percent of the funds collected annually from mining for his discretionary use. These monies are to enable the Secretary to fund projects in his own right under Sections 401(c), 403 and 409 of the Act, to exercise his authority under Section 407 to acquire and reclaim orphaned coal mine lands where owners are unavailable or recalcitrant, and to expend monies for emergency AML projects under Section 410. Further, these funds are needed to implement AML projects in states without AML programs and on Indian lands until tribal authorities receive their own funds. Federal funds are also necessary to address interstate problems or problems of such enormous size, like the Centralia, Pennsylvania mine fire, that they would use up a state's entire annual AML allocation.

Given the slow pace at which the states have been expending their AML funds on actual projects and the even slower pace at which the federal government has been spending its share of the AML funds and getting AML grants out to the states, this is hardly the time to cutback on the federal program. Also, given the enormous job benefits which will flow from an invigorated AML program (Governor Herscler in his testimony before the House Subcommittee on Energy and the Environment on February 17, 1982, estimated that for every million dollar expended in AML funds 50 full time jobs will be cancelled), it seems counterproductive and short-sighted to reduce the Federal share of that program and hence cut back on the number of projects nationwide receiving these funds.

For the same reasons, we oppose OSM's requested cuts in the RAMP program. In its FY 84 budget proposal, OSM proposes holding the RAMP program at a level where it is only funding existing cooperative projects; new projects must come out of the state's AML grants. This means that a portion of those funds will come from the states' share of those grants. A year ago, this Committee not only added $15 million to the RAMP program, but also specifically enjoined OSM from using money from the states' share of the AML Fund for this purpose. This Committee further evidenced its concern over the administration of the RAMP program by adding language to the appropriation bill to make it clear that administrative expenses associated with implementing Section 406 were to be restricted to less than 15 percent of the program's cost. OSM's decision in its FY 84 budget to zero out the Federal share of the RAMP Program with respect to new projects is in direct defiance of this Committee's action last year.

We support a fully funded RAMP program, as it offers the only way at present of addressing erosion and non-point source runoff from abandoned strip mines; a critical opportunity for controlling the unacceptably high soil losses occuring annually from our nation's cropland. Conservation techniques to control soil erosion developed under the RAMP program could offer an invaluable learning experience, which one would hope could be implemented eventually on a larger scale through the Clean Water Act and other related legislation.

Proposed Amendments to Title IV

As a result of OSM's lackadaisical administration of the Title IV AML program, interest appears to be building to amend Title IV to eliminate the agency from the process entirely.

At the outset, let me say that while we are sympathetic with the implicit criticism contained in any legislation to improve upon the administration of the AML program, we do not support amending the law. As I have stated elsewhere in my testimony, there has been too much delay in allocating these funds to the states. It is time to get on with the business of reclaiming abandoned coal and non-coal mines. However, the environmental community is unalterably opposed to opening up the Surface Mining Act to the amendment process especially to correct what are essentially administrative problems. We think that the problems being experienced by the states can be better addressed, by focusing on the causes of delay in the administration of the program and seeking relief through the appropriation or oversight process. Afterall, this is the first oversight hearing on the AML program. I think the agency should be given a chance to respond to these criticisms and mend its ways, before the fundamental design of the program, as set forth in Title IV is tinkered with.

Specifically, we opposed measures to provide for an automatic pass through of appropriated monies to the states. Only by allocating funds through the grant process, will the federal government assure itself that these monies are actually being spent to correct on-the-ground problems at abandoned mine sites. Grants offer a mechanism for federal oversight of how these funds are being spent; a means of assuring that money collected from the coal mining industry is actually going

> "to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public."

30 U.S.C. 1202(h) (seq. 102). This oversight is a necessary part of the trust responsibility that the Federal Government bears with respect to this Fund. If monies are not being spent appropriately by a state under an AML grant, then the federal government retains the authority to terminate the grant or make other adjustments. Automatic payments of money to a state regardless of that state's performance in implementing the purposes of Title IV will prevent the federal government from exercising this type of control.

Further, the Abandoned Mined Lands Fund is explicitly linked to states having approved regulatory programs under Title V of the law. 30 U.S.C 1235(c)(405(c)). Providing for automatic payment to the states breaks this linkage. It is our position that a state should not be entitled to funds to administer a reclamation program at orphaned mined sites, if they have not demonstrated the capability to administer a regulatory program at active mine sites under Title V. These comments on the wisdom of this type of legislative fix are made not in a spirit of distrust of the states' willingness or ability to administer effective AML programs, but rather out of a desire that the Interior Department retain its independent trust responsibilities over these funds.

Thank you for providing me with this opportunity to appear here before you today. I appreciate your attention to my remarks and I will be pleased to answer any questions that you might have about my testimony.

STATEMENT OF JAMES S. LYON, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY CENTER, WASHINGTON, D.C.

Mr. LYON. Mr. Chairman, I'll be happy to summarize my testimony. I'm James S. Lyon, Washington representative of the Environmental Policy Center. The Center is a nonprofit public interest organization which lobbies on behalf of local citizens who are impacted by energy, water and agricultural issues.

Problems exist with the utilization of the abandoned mine land fund in making it meet its maximum potential. OSM has been reluctant to release to the States their share of the fund. The States have claimed that OSM has been overly rigid in its interpretation of the program and in its review and approval of State projects. The States are also critical of the long delays associated with project approval and paperwork required for grant processing that the agency has added during this administration.

This criticism seems quite out of character for an agency which has raised the New Federalism as its banner and pledged to abolish regulations which are excessive, burdensome, and counterproductive. On page 1 of the OSM budget justification, the agency notes that it's fiscal year 1983 and fiscal year 1984 AML appropriation request was based on 305 Federal AML employees. Yet as of December 31, 1982, OSM had only 246 AML employees on board. No wonder the agency is having problems in implementing the program at this time.

We agree with the many Governors whose last week's statement before the House Interior Committee criticized OSM interpretation of section 403 of the act. This section allows for greater flexibility than OSM is allowing.

While they need to initially address the problems which pose a threat to health and safety, they should not disqualify priorities three, four, five, and six projects from being considered. This is an issue of great importance to the citizens of Pennsylvania whose State in fiscal year 1982 was only allocated AML funds to abate several subsidence projects. Subsidence projects usually stem from underground mining problems. No money was allocated for surface AML projects. It is our understanding that this trend is continuing. Pennsylvania has an enormous amount of abandoned underground mining problems which qualify under priority one and two. It is these citizens' concerns that under OSM's interpretation of section 403, AML money may run out before any abandoned surface mining projects are funded.

In regards to section 409 of the act, OSM has been inflexible in its interpretation of AML allocation for noncoal projects. This provision allows for AML funds to be used in reclamation of noncoal projects relating to the protection of public health or safety. OSM has chosen to interpret this section to mean that all abandoned coal mine projects in the State must be reclaimed before noncoal projects may be appropriated.

OSM's interpretation fails to provide the funds to mitigate noncoal sites which pose a threat to public health and safety. This point is best illustrated in OSM's deferred disapproval in the State of Montana for the five noncoal projects which you've already heard about. OSM has claimed that the Colorado tailings projects proposal lacked data. EPA is a branch of the Federal Government and has extensive material on this project. Why is there no cooperation with that agency?

We understand that the AML fund is primarily for coal reclamation, but is our interpretation that OSM should on a State-by-State analysis, appropriate a reasonable share of the fund for noncoal projects when they qualify as a threat to public health and safety. If OSM finds this section vague, we recommend that clarification and criteria be offered through the administrative rulemaking process so that the public will have an opportunity to participate.

The abandoned mine lands inventory has also been a source of controversy. This inventory seriously lacks credible data. Even though the States assisted in its development, many States regard the inventory as useless. However, OSM on occasion through policy statements, has indicated it may use this inventory to evaluate projects for funding. This may mean that if a proposed project is not in the inventory, it may be denied approval. An accurate inventory is an essential tool for project evaluation. We encourage the committee to look into this matter.

In its fiscal year 1984 budget, OSM has recommended an increase over last year's recommendation for State-grant allocations. At the same time, the agency is proposing a $5.1 million cut in its interior reclamation projects, and in RAMP. OSM justifies these cuts by claiming that the increased State grants should handle these areas. OSM has a responsibility under the law to respond and abate abandoned mine land emergencies, manage projects in nonprimacy States, Indian lands, and through RAMP. By cutting its funds in these areas, it is also cutting its commitment to continue to address these problems. OSM should not hinder its abilities to handle these responsibilities.

Mr. Chairman, many of the States have been critical of the Federal Government's implementation of the AML program. We share with the States in many of their concerns. However, we do not believe that these problems should be solved through legislative changes. The problems are mainly administrative in nature, and can be solved in that arena and through the appropriation process. To open up the Surface Mining Act regarding AML is premature.

My statement is not addressing the Indian lands issue which we believe needs to be remedied in an immediate fashion.

Some of the potential amendments being discussed may provide larger problems later. Direct allocations to the States may hinder proper Federal oversight of grant use. OSM has been overly rigid in its allocation thus far, however, the act does provide for Federal oversight which can assist the process. Allowing State grant money to accrue interest may provide the States a financial disincentive toward not spending their full allocation on reclamation. And finally, one of the most sinister proposals regards changing the date when lands are eligible for AML funds from August 3, 1977, to when a State gained primacy. This opens a dangerous loophole. Unreclaimed sites have occurred since the act's passage due to inadequate reclamation bonds, lax Federal and State enforcement, and wildcatting. This proposed change would absolve the perpetrators' responsibilities and work as a disincentive to the States in correcting those abuses and lax enforcement.

In summary, the AML program is experiencing problems in implementation and intention. The problems center on the Reagan administration's interpretation of the program, overburdensome administrative requirements, and mismanagement. These problems should be corrected by changes in the agency and through the appropriation process, not by changes in the law.

Senator **Warner**. I'm concerned about the Indians when we come to that point. You testified that the abandoned mine land inventory is useless. Has not the OSM recommended the States to reinventory these lands as they recognize that the original inventory has some problems?

Mr. **Lyon**. In my discussion with some of the State representatives, there seems to be some question as to how serious the process is being undertaken, and I brought it up, as I seriously think it needs to be looked into and I think OSM should take on a review of this inventory.

Senator **Warner**. Thank you.

[The prepared statement of Mr. Lyon follows:]

ENVIRONMENTAL POLICY CENTER
317 Pennsylvania Ave., S.E., Washington, D.C. 20003
202/547-5330

TESTIMONY

OF

JAMES S. LYON

BEFORE

THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SENATOR JOHN W. WARNER, CHAIRMAN
OVERSIGHT OF THE OFFICE OF SURFACE MINING'S
ABANDONED MINE LANDS PROGRAM

FEBRUARY 24, 1983

Mr. Chairman, and members of the Committee, I am James S. Lyon, Washington Representative of the Environmental Policy Center. The Center is a non-profit public interest organization which lobbies on behalf of local citizens who are impacted by energy, water, and agricultural issues.

The Abandoned Mine Land Fund (AML), of the Surface Mining Control and Reclamation Act was instituted for the purpose of reclaiming more than 1½ million acres of land left useless and abandoned from decades of irresponsible mining before the enactment of the law in 1977. While the coal was removed years ago, these lands continue to plague communities with serious problems such as soil erosion, toxic runoff, mine fires and subsidence, and for the most part lay unproductive. The full utilization of this fund, as Congress intended, promises to diminish serious health threats and to increase the economic potential of these lands in the coal field communities.

The fund was established in 1977, but its implementation was first hindered by many states' failure to obtain primacy and an approved AML program. To date, 21 coal states have approved AML programs, and the remaining 4 states are expected to obtain approval by OSM within a month or two. However, it is scandalous and a blatant misuse of the public trust that after over 2 years since some of the states first obtained primacy, the federal government continues to sit on the funds that are desperately needed in the coal fields.

The coal fields are in the grips of a depression--a depression that is not a result of the Surface Mining and Reclamation Act, but rather the economy and lack of demand for coal. Unemployment in these regions is pressing the limits of state and community resources. Many coal states are currently borrowing from the Federal Treasury to meet unemployment insurance claims. Millions of acres of abandoned lands could be made productive, which would ease the economic situation. In the short term, this means jobs. In the long term, this means productivity of land and property values. Full utilization of this fund will not only substantially benefit these areas, but it is mandated by the law, and is desperately needed by the unemployed. Anything less is a cruel hoax on the unemployed of the coal fields who are told by the President that he has concern for their plight.

Now it is true that some states have contributed to the delay of the distribution of the AML funds through initial unwillingness to comply with P.L. 95-87. But this offers no acceptable excuse for the kidnaping of the AML fund by the Reagan Administration at the expense of unemployed workers and the states.

The promise is clear. With each $100 million expended in this program, 5000-7000 new jobs are available. Furthermore, assuming an average allotment of $125 per week per recipient in unemployment compensation, over a 26-week period, the expenditure of each $100 million could eliminate $22.75 million from the unemployment compensation fund. It is reasonable to assume that an injection of such capital will go far in stimulating the local economies. This certainly will produce new job opportunities for many unemployed workers in many areas.

However a problem exists in utilizing this fund to its maximum potential. The Office of Surface Mining (OSM) has been reluctant to release to the states their share of the fund. The states have claimed that OSM has been overly rigid in its interpretation of the program, and in its review and approval of state projects. The states are also critical of long delays associated with project approval (usually 6-8 months), and the increased paperwork required for grant processing that the agency has added during this Administration. This criticism seems quite out of character for an agency which has raised the "New Federalism" as its banner, and pledged to abolish regulations which are "excessive, burdensome, and counterproductive". Furthermore, it appears that the agency's infamous reorganization has not streamlined its ability to respond, but rather burdened it through the understaffing and loss of technical expertise that it created. On page 1 of OSM's budget justification, the Agency notes that its FY '83 and FY '84 AML Appropriation request was based on 305 federal AML employees. Yet as of December 31, 1982, OSM only had 246 AML employees.

In defense, OSM has often stated that it has already appropriated more AML money than the previous Administration. This is an absurd claim, since many states were not eligible under the last Administration to receive their full share.

OSM has also claimed that state grants have been hampered by the states' lack of adequate staffing levels. OSM claims that many states are actually cutting back in personnel, and therefore have been unable to use all the funds it has requested. This claim seems somewhat hollow since federal funds pay for state AML staffing.

We agree with the Governors from Colorado, Montana, New Mexico, Utah, West Virginia and Wyoming and the Public Service Commission of North Dakota whose last week statements before the House Interior Committee criticized OSM's interpretation of Section 403 of the Act. According to these states, OSM is interpreting this section so that only priority 1 and 2 projects will be funded. This section allows for greater flexibility than OSM is allowing. While the need to initially address AML problems which pose a threat to public health and safety is an essential priority of the program, this should not disqualify priority 3, 4, 5, and 6 projects from being considered. This is an issue of great importance to citizens in Pennsylvania whose state in FY '82 was only allocated AML funds to abate several subsidence projects. Subsidence projects usually stem from underground mining problems. No money was allocated for surface AML projects. It is our understanding that this trend is continuing. Pennsylvania has an enormous amount of abandoned underground mining problems, which qualify under priority 1 and 2. It is these citizens concern that under OSM's interpretation of Section 403, AML money may run out before any abandoned surface mining project is funded. With the states gearing up for the programs, OSM should provide more flexibility in its priority process.

In regards to Section 409 of the Act, OSM has also been inflexible in its interpretation of AML allocations for non-coal projects. This provision allows for AML funds to be used in the reclamation of non-coal projects "relating to the protection of public health or safety". OSM has chosen to interpret this section to mean that all abandoned coal mine projects in a state must be reclaimed before non-coal projects may be appropriated. Section 409 was written into the Act to provide equity to the western states, which have limited abandoned coal sites in comparison with the east, but pay an equal proportion into the fund. OSM's interpretation fails to provide funds to mitigate non-coal sites which pose a threat to public health and safety. This point is best illustrated by OSM's refusal to grant funds to the State of Montana for five non-coal projects. One of the five is the Colorado Tailings Site, just outside of Butte, Montana. Its problems stem from previous copper mining activities. OSM denied the request by claiming that the state failed to demonstrate the need for protection of public health and safety as required in the Act. Since then, the site has been rated number 24 out of 418 nationwide on EPA's list of the worst toxic dumps. We understand that the AML fund is primarily for coal reclamation, but it is our interpretation that OSM should, on a state-by-state analysis, appropriate a "reasonable share of the fund for non-coal projects when they qualify as a threat to public health and safety." If OSM finds this section vague, we recommend that clarification and criteria be offered through the Administrative rulemaking process so that the public has an opportunity to participate.

The National Abandoned Mine Lands Inventory has also been a source of controversy. This Inventory seriously lacks credible data. Even though the states assisted in its development, many states regard the inventory as useless. However, OSM on occasion through policy statements, has indicated it may use this inventory to evaluate projects for funding. This may mean that if a proposed project is not in the inventory, it may be denied approval. An accurate inventory is an essential tool for project evaluation. We encourage the committee to look into this matter.

In its FY '84 budget, OSM has recommended an increase over last year's recommendation for state grant allocations.

At the same time, the agency is proposing a $5.1 million cut in its Interior Reclamation Projects, and in RAMP. OSM justifies these cuts by claiming that the increased state grants should handle these areas. OSM has a responsibility under the law to respond and abate abandoned mine land emergencies, manage projects in non-primacy states, Indian lands, and through RAMP. By cutting its funds in these areas, it is also cutting its commitment to continue to address these problems. OSM should not hinder its abilities to handle these responsibilities.

Mr. Chairman, many of the states have been critical of the federal government's implementation of the AML program. We share with the states in many of their concerns. However, we do not believe that these problems should be solved through legislative changes. The problems are mainly administrative in nature, and can be solved in that arena and through the appropriation process. To open up the Surface Mining Act regarding AML is premature.

Some of the potential amendments being discussed may provide larger problems later. Direct allocations to the states may hinder proper federal oversight of grant use. OSM has been overly rigid in its allocation thus far, however the Act does provide for federal oversight which can assist the process. Allowing state grant money to accrue interest may provide the states a financial disincentive toward not spending their full allocation on reclamation. And finally, one of the most sinister proposals regards changing the date when lands are eligible for AML funds from August 3, 1977 to when a state gained primacy. This opens a dangerous loophole. Unreclaimed sites have occurred since the Act's passage due to inadequate reclamation bonds, lax federal and state enforcement, and wildcatting. This proposed change would absolve the perpetrators' responsibilities and work as a disincentive to the states in correcting those abuses and lax enforcement.

In summary, the AML program is experiencing problems in implementation and intention. The problems center on the Reagan Administration's interpretation of the program, overburdensome administrative requirements, and mis-management. These problems should be corrected by changes in the agency and through the appropriation process, not by changes in the law.

TABLE 13
STATE RECLAMATION PROJECTS
FUNDED IN FISCAL YEAR 1982
BY TYPE OF PROJECTS
($000)

STATE	SUBSIDENCE	HIGHWALLS	IMPOUNDMENTS	SLIDES	REFUSE PILES	FIRES	ACID MINE DRAINAGE	SHAFTS	PORTALS	TOTAL
Alabama										
Funds	96.5	874.3		413.3	737.7			737.3	154.7	3,013.8
No. of Projects	1	9		2	5			28	18	63
Colorado										
Funds	13.4							283.4	255.2	552.0
No. of Projects	1							6	5	12
Illinois										
Funds	138.0		3,830.0	123.9			45.0	207.5		4,344.4
No. of Projects	2		1	1			1	4		9
Indiana										
Funds	1,084.3	2,654.0	11.5	316.7	242.6			1,723.4	76.1	6,108.6
No. of Projects	6	15	1	1	1			30	3	57
Kentucky										
Funds		519.0	994.6	9,291.2	808.0	2,214.6	966.3	698.6		15,492.3
No. of Projects		2	2	16	2	2	3	5		32
Missouri										
Funds								72.5		72.5
No. of Projects								1		1
Montana										
Funds	3,386.4			689.6				1,106.5	802.7	5,985.2
No. of Projects	7			2				3	3	15
Ohio										
Funds	331.0	1,291.0	878.7	5,097.1	740.0		2,277.2	350.2		10,965.2
No. of Projects	9	5	5	8	5		8	11		51

TABLE 13 (Continued)
STATE RECLAMATION PROJECTS
FUNDED IN FISCAL YEAR 1982
BY TYPE OF PROJECTS
($000)

STATE	SUBSI-DENCE	HIGH-WALLS	IMPOUND-MENTS	SLIDES	REFUSE PILES	FIRES	ACID MINE DRAIN-AGE	SHAFTS	PORTALS	TOTAL
Oklahoma										
Funds		262.3	398.7	579.2				10.8		1,251.0
No. of Projects		2	3	4				1		10
Pennsylvania										
Funds	9,541.7									9,541.7
No. of Projects	3									3
Tennessee										
Funds		344.2	296.6	36.5	110.5			5.9	53.9	847.6
No. of Projects		1	1	1	1			1	2	7
Virginia										
Funds			127.8	2,695.3	2,121.0	802.6			201.4	5,948.1
No. of Projects			2	9	4	1			6	22
West Virginia										
Funds	2,898.9			3,556.9	3,835.6		170.6	38.3	240.7	10,741.0
No. of Projects	1			5	5		3	3	4	21
TOTAL										
Funds	17,490.2	5,944.8	6,537.9	22,799.7	8,595.4	3,017.2	3,459.1	5,234.4	1,784.7	74,863.4
No. of Projects	30	34	15	49	23	3	15	93	41	303

NORTHWEST FIELD OFFICE BRIEFING PAPER

Colorado Mill Tailiings

Silver Bow County Butte, Montana

The Colorado tailings are located on the southwestern side of the city of Butte, Montana. The site displaced the original Silver Bow Creek Channel. The creek has been rerouted around the tailings. Both surface and ground water are passing over and through the tailings and discharging into Silver Bow Creek. As much as 75% of the toxic heavy metal load in Silver Bow Creek has been atributed to the Colorado tailings site.

The State of Montana maintains that human health and safety is threatened by this source of severe water degradation. They propose to remove the tailings and dispose of the material in an environmentally sound manner, stabilize the channel, and restore Silver Bow Creek to a viable water source and fishery. The tailings are proposed to be transported to an existing processing plant in Butte.

OSM made an investigation of the site, accompanied by Montana A.M.R. staff, as well as reviewed various file documents. In general, we found a lack of documentation with regard to negative impact upon domestic water supplies and whether the tailings did contribute 75% of the load in the creek. Since the site is located down drainage from the City of Butte, the potential for other sources of pollution is great. The State did not establish actual total benefits that a clean-up of the Colorado tailings would have on Silver Bow Creek.

The Northwest Field Office of OSM recommended that approval of the construction project request be deferred. However, additional investigation and planning for mitigation of the environmental quality aspects from the tailings, could be continued under the Administrative Grant. Correction of the problem could be made within the priority sequence as specified in P.L. 95-87.

Our recommendation concluded that the required demonstration for the need of protection of public health and safety as required in Section 409(c) of P.L. 95-87 was not established. Further, requirements of Section 408 (lein requirements) and other requirements of Section 409 (disposal requirements) were not satisfied.

DEPARTMENT OF STATE LANDS

TED SCHWINDEN, GOVERNOR
CAPITOL STATION
STATE OF MONTANA
(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION
1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

January 28, 1983

Mr. William Schmidt
Office of Surface Mining
U. S. Department of the Interior
1951 Constitution Avenue, N.E.
Washington, D.C. 20240

RE: Montana Non-Coal Reclamation Projects

Dear Bill:

Enclosed is a copy of a recent submittal to our Congressional Delegation and the Mills Field Office. This submittal addresses the issue of non-coal abandoned mine reclamation projects. Notice we feel we have adequate data on three of the five requested sites at this time. We feel the Alta Mine, McLaren Tailings and the Colorado Tailings already have adequate data as hundreds of thousands of dollars have already been spent by the EPA and Montana State Health Department for studies on these three sites.

Since our grant submittal the EPA has published the Super Fund List. Silver Bow Creek, on which the Colorado Tailings site has been designated one of the prime pollution contributors, has been rated 24th nationwide as a toxic waste site out of 418 sites. It really doesn't seem possible that this project can be rated so high nationwide and yet not qualify as "relating to the protection of the public health and safety" under our Abandoned Mine Program.

Bill, I would like to invite you and perhaps Steve Griles out to Montana to visit these sites. We can arrange the trips this spring by helicopter or car, your preference. We can accomplish everything in one to two days. The McLaren site visit requires us to visit Yellowstone Park as the site is in Cooke City and the only entrance is through the park. I really feel we have good justification on these projects and are meeting the intent of Congress.

Thanks for your time and I would be pleased to show you the Big Sky Country.

Sincerely,

✓Richard Juntunen, Chief
Abandoned Mine Reclamation Bureau

sg
Enclosures

"AN EQUAL OPPORTUNITY EMPLOYER"

STATEMENT OF CALEB SHIELDS, COUNCILMAN, FORT PECK TRIBAL COUNCIL, POPLAR, MONT., ON BEHALF OF THE COUNCIL OF ENERGY RESOURCE TRIBES, AS PRESENTED BY ELLEN BROWN

Ms. BROWN. I'm Ellen Brown. Mr. Shields wasn't able to be here this afternoon and he asked me to submit his testimony.

The Council of Energy Resource Tribes is an organization of 37 American Indian tribes that own significant coal and other energy resources. The tribes own approximately one-third of the low-sulfur strippable coal west of the Mississippi River. Three tribes, the Navaho, the Crow, and the Hopi currently produce coal. In 1981 approximately 22 million tons of coal were produced from surface mines on Indian lands. CERT strives to insure that the development of our resources occurs in an environmentally and economically sound manner.

The Surface Mining Act has created some special problems for Indian tribes that need to be resolved both by Congress and by the administration. Significant among those problems are those encountered with the abandoned mine reclamation program.

The act provides for tribally run reclamation programs. As with the States, mines on Indian lands contributed to the abandoned mine reclamation fund. As with the States, 50 percent of the funds collected is allocated to the tribe from whose land the money was collected. Unlike the States, however, tribes have no access to that money until additional legislation is passed. Section 710 of the act required the Secretary of the Interior to conduct a study and to submit to Congress draft legislation that would, and I quote, "allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of the regulation of surface mining of coal on Indian lands." Section 710 also specified that the act is to be implemented by the Secretary of the Interior on Indian lands pending enactment of the legislation called for in the act and the development of full tribal regulatory programs.

With the legislation which was due to be submitted to Conqress by January 1, 1979, is still under review within the Department of the Interior.

Contrary to what Mr. Harris said this morning, we have been told that legislation would be submitted this spring along with a report and the comments of the affected tribes. In the meantime, the office of surface mining has supported the development of tribal reclamation plans for all three tribes as it has supported the development of State grants.

The three coal producing tribes have or are about to have completed and submitted their reclamation claims to OSM, but OSM cannot approve those plans regardless of the merit until the legislation on section 710 is enacted.

There are more details in Mr. Shields' testimony, but I would like to summarize the recommendations which he makes.

First is to make legislation enabling tribes to assume full regulatory programs a high priority in this Congress. The act envisioned an amendment to itself, but the same purpose we think could be served through a separate Indian Lands Surface Mining Control and Reclamation Act that parallels the existing act. Only when such legislation is passed will OSM be allowed to approve tribal reclamation programs.

Second, we think that such legislation should not require that Indian tribes have approved regulatory programs before OSM can approve reclamation programs. Although we think the requirement may be good for State programs, the 1977 act has allowed OSM to fund the development of both regulatory and reclamation programs for the States. But for tribes, OSM has only been able to provide substantial program development money for reclamation programs. So although there has been limited assistance going from OSM to the tribes to develop regulatory programs, it is not at all on the scale that the assistance has been to the States. Tribes, therefore, can really only begin to develop a full regulatory program once Indian lands legislation is passed. And to require the tribes to wait still further to receive their share of the reclamation fund would be to penalize them even further for inaction on the part of others.

Third, CERT feels that Indian lands legislation should allow the tribal share of the fund to collect interest. We understand that the Treasury Department has ruled that without specific authorization in the act for the fund to collect interest it cannot do so. Certainly and especially in the case of Indian tribes, where their failure to use the fund continues to be beyond their control, and while the costs of reclamation rises, there is every justification for allowing their share to collect interest.

Fourth, we feel that Congress in passing Indian lands legislation should not allow the tribal share of the fund to be reprogramed if it is unused for 3 years as tribes have not had the opportunity to use their share.

Finally, we would like to urge this committee to use its influence to see to it that Congress appropriates adequate funding to the Federal reclamation program to allow reclamation of priority sites on those reservations where coal is not now being mined and timely reclamation on those reservations where coal is being mined.

And I would like to emphasize that any increase in funding would have to go to the Federal reclamation program until a time that Indian lands legislation is passed.

Thank you.

[The prepared statement of Mr. Shields follows:]

TESTIMONY OF

MR. CALEB SHIELDS

ON BEHALF OF

THE COUNCIL OF ENERGY RESOURCE TRIBES

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

February 24, 1983

Mr. Chairman, Members of the Subcommittee on Energy and Mineral Resources, I am Caleb Shields, a member of the Fort Peck Tribal Council. I am here on behalf of the Council of Energy Resource Tribes. (CERT). CERT appreciates this opportunity to share with you some of the special problems faced by Indian Tribes under the Abandoned Mine Reclamation Program under the Surface Mining Control and Reclamation Act.

CERT is an organization of thirty-seven American Indian Tribes that own significant coal and other energy resources. The CERT Tribes own approximately one-third of the low-sulfur strippable coal west of the Mississippi River. Three Tribes, the Navajo, the Crow and the Hopi currently produce coal. In 1981 approximately 22 million tons of coal were produced from surface mines on Indian lands. CERT strives to ensure that the development of our resources occurs in an environmentally and economically sound manner.

CERT believes that the Surface Mining Control and Reclamation Act is vital to tribal efforts to manage the development of our coal resources. The legislation is helpful for two reasons. First, it established comprehensive and uniform minimum standards and enforcement measures for operations on Indian lands. Second, it clarified Congress's intent to enable tribal governments to implement the Act on Indian lands, thus avoiding the types of jurisdictional problems that often plague the enforcement of environmental laws for Indian lands.

But the Act also created some special problems for Indian Tribes that need to be resolved by Congress and the Administration. Significant among those problems are those encountered with the Abandoned Mine Reclamation Program.

The Act provides for tribally run reclamation programs. As with the states, mines on Indian lands contribute to the Abandoned Mine Reclamation Fund. As with the States, 50 percent of the funds collected is allocated to the Tribe from whose land the money was collected. Unlike the States however, Tribes have no access to that money until the Act is amended. Section 710 of the Act required the Secretary of the Interior to conduct a study and to submit to Congress draft legislation that would "allow Indian Tribes to elect to assume full regulatory authority over the Administration and enforcement of the regulation of surface mining of coal on Indian lands." Section 710 also specified that the Act is to be implemented by the Secretary of the Interior on Indian lands pending enactment of the legislation called for in the Act and the development of full tribal regulatory programs.

The study mandated by the Act has been completed. In 1978 the Office of Surface Mining (OSM), entered into a contract with CERT to prepare the background analysis and policy recommendations. The Solicitors Office completed a study of jurisdictional issues in 1980. But the legislation, which was due to be submitted to Congress by January 1, 1979 is still under review within the Interior Department. We have been told that it would be submitted this Spring.

Until the Indian lands legislation is submitted and until Congress acts, Tribes will not have access to the Abandoned Mine Reclamation Fund and reclamation programs on Indian lands will be held up. This is because under the Act OSM cannot approve state or tribal reclamation plans until the State or Tribe has an approved regulatory program. But OSM cannot approve tribal regulatory programs until the Indian lands legislation called for in Section 710 is enacted by Congress.

As of the end of Fiscal Year 1982, $38.4 million had been collected into the fund from coal mines on Indian land. The tribal share of that, equaling $19.2 million has been sitting unused, collecting no interest and there it will sit until and unless both Interior and the Congress act.

In the meantime the Office of Surface Mining has supported the development of tribal reclamation plans for all three tribes as it has supported the development of the state plans. The three coal producing Tribes have or are about to have completed and submitted their plans. But OSM cannot approve those plans regardless of their merit.

OSM, to its credit, has proposed funding in FY '84 to enter into cooperative agreements with the three Tribes for continued planning and training so that the Tribes will not lose the expertise they have gained thus far. But this is only a stop gap measure.

An additional potential problem for the Tribes is that the Act allows OSM to reprogram a state or a tribe's share of the fund if it has gone unused for three years. The share allotted to the three coal owning Tribes is unused but through no fault of the Tribes. While OSM has not reprogrammed the money there is the danger that they could as pressure mounts for money from the Fund. This would surely be an injustice.

Tribal problems with the Abandoned Mine Reclamation Program do not end with the inaccessability of the Tribes share of the fund–nor are they limited to the three coal producing Tribes.

The balance of the Reclamation Fund is retained by the Secretary for both mandatory and discretionary programs. In an attempt to develop a basis for allocating the Secretary's share of the fund OSM conducted a national inventory of abandoned coal mines. This inventory was not required by the Act and in fact we think that the Act envisioned a more flexible approach to the use of the Secretary's share of the funds. But if the inventory is to be used as the basis of allocating the fund it is essential that it be accurate and complete. This it certainly is not, only four reservations were included in the inventory. Fort Peck, for example was not included in the inventory. Yet we had coal mining in the past and there are several abandoned mines on the reservation. CERT estimates that there are 43 additional Indian reservations or tribally owned lands on which there may have been coal mining. Abandoned mines sites on some of these reservations or lands are known to present serious threats to public health and safety, damage livestock and property and environmental problems. At Fort Peck, for example, we are experiencing serious subsidance problems with a mile of a school.

Recently OSM approved funding to CERT to inventory abandoned coal sites on these additional reservations. It is hoped that the additional sites that CERT identifies can be expediously added to OSM's inventory so that they can be eligible to receive attention under OSM's federal program.

But even if OSM's inventory were adequate tribal lands would go untended under OSM's current plans. CERT has been told that to date OSM has requested no funding for its federal program for FY '84 in its budget request beyond that needed for emergency measures. If this request were to be honored by Congress only emergency situations could be tended to. But even the majority of those sites that need to be reclaimed to protect the health, safety and welfare of citizens from extreme danger, those classified as priority one in Section 403 of the Act, would go untended. The Act gave OSM a clear mandate to reclaim those lands and we would urge that Congress insist that they do so through the budget appropriations processes.

Further we understand that Congress is considering increasing the funding to the program, in part, to provide jobs. On Indian reservations where the unemployment rate averages three times the national unemployment rate, increasing funds would be of great benefit. But to benefit tribes the federal program must be increased as that is the only funding to which the tribes currently have access.

In summary OSM's performance regarding it's abandoned mine lands program on Indian land has been mixed. OSM's delay in submitting Indian lands legislation is inexcusable. It now looks like Interior will respond in the near future. At that point the responsibility will lie with Congress to move expeditiously to enact the legislation into law. Until that happens the coal mining tribes will not have access to the funds allocated to them.

OSM is to be praised for seeking to continue to support tribal reclamation planning and the training of tribal staffs so that there can be stability in tribal staffing until the Act is amended.

CERT however cannot support OSM's decision not to seek funding to enable it to carry out more fully Title IV programs on Indian lands.

CERT has some specific recommendations for Congress. First, to make legislation enabling tribes to assume full regulatory programs a high priority this Congress. The Act envisioned an amendment to itself but the same purpose could be served through a separate Indian Land Surface Mining Control and Reclamation Act. Only when such legislation is passed will OSM be allowed to approve tribal reclamation programs.

Second we think that such legislation should not require that Indian Tribes have approved regulatory programs before OSM can approve reclamation programs. Although that requirement may make sense for state programs the 1977 Act has allowed OSM to fund the development of both regulatory and reclamation programs for the states. For the Tribes however OSM has only been able to provide program development money for reclamation programs. Although OSM has provided limited assistance to tribes so that they may begin to develop regulatory programs this support is not at all on the scale that assistance to the states has been. Tribes will only begin to develop full regulatory programs once Indian lands legislation is passed. To require Tribes to wait to receive their share of the Abandoned Mine Reclamation Fund would be to penalize them even further for the inaction on the part of others.

Third, CERT feels that Indian lands legislation should allow the tribal share of the fund to collect interest. We understand that the Treasury Department has ruled that without specific authorization in the Act for the fund to collect interest it cannot do so. Certainly in the case of Indian Tribes, where their failure to use the fund continues to be beyond their control, while the costs of reclamation rise, there is every justification for allowing their share to collect interest.

Fourth, we feel that Congress in passing Indian lands legislation should not allow the tribal share of the fund to be reprogrammed if it is unused for three years as Tribes have not had the opportunity to use their share.

Finally, we would like to urge this Committee to use its influence to see to it that Congress appropriate adequate funding to the Federal Reclamation Program to allow reclamation of priority sites on those reservations where coal is not now being mined and timely reclamation on those reservations where coal is being mined.

Again, I thank you for this opportunity to testify. I will be happy to answer any questions which you may have.

Senator **Warner**. Did you have an opportunity during recess to talk to the OSM folks about the legislation?

Ms. **Brown**. No, I didn't.

Senator **Warner**. Well they, I'm sure took care of it.

Ms. **Brown**. We will be talking with them.

Senator **Warner**. Anything further from this panel?

[No response.]

Senator **Warner**. Thank you.

We'll now here from the representatives of the SRP Coal Co., and the Hess & Fisher Engineering Co., both from Clearfield, Pa.

It's my understanding, gentlemen, that you're testifying on behalf of the Mining and Reclamation Council of the United States, is that correct?

Mr. **Fisher**. That's correct.

Mr. **Penoyer**. That's correct.

STATEMENT OF ROBERT PENOYER, CHIEF EXECUTIVE OFFICER, SRP COAL CO., INC., CLEARFIELD, PA., ON BEHALF OF THE PENNSYLVANIA COAL MINING ASSOCIATION AND THE MINING AND RECLAMATION COUNCIL OF AMERICA, ACCOMPANIED BY WILSON FISHER, PRESIDENT, HESS & FISHER ENGINEERS, INC., CLEARFIELD, PA.

Mr. **Penoyer**. Mr name is Robert Penoyer. I am the chief executive officer of a very small coal company in central Pennsylvania, and we're down here to testify on behalf of the Mining and Reclamation Council of America, and also the Pennsylvania Coal Mining Association of which I am a regional vice president.

Along with me today is Mr. Wilson Fisher, an engineer, also from Clearfield, Pa. And along with all the predecessors before the Chair today, we are mostly interested in seeing a fully implemented AML program in process.

Mr. Fisher is now going to give the Mining and Reclamation Council's stand on this program.

Mr. **Fisher**. Mr. Chairman, I'd like to make several points relative to the Mining and Reclamation Council's interest and position relative to the AML program. First of all, very importantly, we heartily endorse the AML program and its objectives, the alleviation of health, safety and environmental concerns. We would like to note that we believe it was also part of the congressional intent that esthetics and water pollution concerns from abandoned surface mine lands were of extreme concern and should have been addressed to the extent that they currently are by the State programs.

We, second, would like to state that an aggressive, full-blown abandoned mine lands program at this point in time will, as has been said by numerous speakers before me, put numerous idle workers back to productivity and employment with this very concern and issue at this time. And certainly with those individuals within our coal industry, an industry which is in its worst slump in the past 25 years.

We do have some real concerns with this as director Harris commented earlier. The employment sector, the companies that are successful in doing reclamation jobs are those earth moving companies, those contractors which are generally regarded as outside the coal industry. We feel as though, and want to state and bring to your attention, Sir, that the primary reason this is so is that we have severe constraints with those provisions which are impelled in instances of substantive reclamation work. The small and medium-sized operators, most of the coal industry independents that have the manpower skills, the wherewithall to do the job, are effectively locked out by this particular provision.

Third, money in the fund now, and this has been stated also by numerous other individuals, would contribute modestly in the overall scheme of things to our economic recovery. The money to do the job is in the trust fund and well established.

The coal industry continues to pay in substantially more than it is currently appropriate. The imbalance, as director Harris also pointed out, will continue for some point in time. We feel as though the States that do have primacy, that have approved abandoned land mine programs at OSM, the current administration has been aggressively reviewing and working with the States and we appreciate that very much. They have through their own diligence laid out the legal and regulatory framework to do the job. And we generally support the priority schemes that the States have developed. We have some problems internally within our States in working with our agencies on an individualized basis to tailor that a little bit more, but fundamentally we are coming around with that.

We would like to see the Secretary's discretionary fund supplementary to the States programs. We'd like to see that more aligned with their set of priorities, and to work within the guidelines established within the States as far as the priority programs are concerned. We feel as though in this particular area a little greater emphasis could be given toward the cost effectiveness of various reclamation processes. Mr. Penoyer will be speaking on that and also comment on that briefly in just a moment.

We also feel that there should be a provision within the Federal portion and the funding within that pool to encourage, and indeed we understand from director Harris' staff that indeed there is some modest ability to work out some applied research and development that could be incorporated within the AML program to assist in helping the state-of-the-art develop so that future references along these lines can be developed a little bit more efficiently and effectively than they are now.

At this point I'll defer to Mr. Penoyer.

Mr. PENOYER. To continue on, in the State which we know best, of course, Pennsylvania, which we have very little of RAMP and—funding going and will go, and the restoration and reclamation at this time, mostly because the State regulatory authority, such as the Department of Environmental Resource, citing section 403, have refused to seek AML funds for projects other than mine fires and subsidence controls. These problems largely, if not exclusively, result from past underground mining practices in our State. Our surface mining operators pay 35 cents a ton in this abandoned land mine fund. In contrast, the deep mine operators only pay 15 cents per ton. And our people are seeing no return to their localities of the abandoned mine land funds that are taken out of that community.

And we have an illustration to go along with it. At this time we would like to put an illustration before you to show you what we are talking about by the disparity in the way the funds are being raised, and I think Mr. Fisher will be able to point it out and comment on it right from there.

Mr. **Fisher**. Mr. Chairman, I'll hit some of the highlights.

The colored areas are representative of the counties that produce coal and have abandoned mine lands in the State of Pennsylvania. The red county has in excess of 30,000 acres, the orange from 20,000 to 30,000, the yellow from 10,000 to 20,000, the green 1,000 to 10,000, and the purple less than 1,000 acres of abandoned mine land. All total in the United States we have a quarter of a million acres that have been identified in excess of a factor of two relative to the next closest States.

Some of the disparities are very, very apparent. In Indiana County which has between 30,000 and 40,000 acres of abandoned mine land, Indiana County has contributed to the AML fund $8.8 million. To date, $107,000 has been spent in that county.

Clearfield County, $16.7 million expended. To date $599,000 returning.

Conversely, we have Lucerne County in the portion of the State with substantially less abandoned mine land area of 1,000 to 10,000 acres, contributing $1.2 million to the fund, yet recipients of $9.3 million in AML funding to date.

We submit that in light of the number of priorities established by the State, 25 priorities in one project in Clearfield County. The disparity speaks for itself.

Seventeen priority 1 projects in Indiana County. Again, a glaring disparity relative to the application of the funds. And again, these are not necessarily problems inherent with the administration. We feel as though we've been working with them to try to take a more forceful lead relative to the agency. Our association has been attempting to do that, too.

Mr. **Penoyer**. Senator, we believe that the underground and surface AML should be segregated into two separate funds. Each remedy the past problems from their own respective industries. In order to help OSM in Pennsylvania upgrade the utilization of the abandoned mine land fund the Pennsylvania Coal Mine Association will volunteer our help to sit on an oversight committee to review priorities for the Department of Environmental Resources of Pennsylvania who we feel need our expertise to oversee this imbalance. In addition, we recommend that the OSM and the States evaluate the cost and benefits of each AML project. In so doing consideration should be given to directing the Secretary-shared money to those projects which would otherwise consume a very disproportionate share of the State funds.

We would hope that Congress and the Office of Surface Mining would provide the needed guidance to the State of Pennsylvania in this regard and we thank you for the opportunity to be here.

Senator **Warner**. Thank you.

[The prepared statement of Mr. Fisher and Mr. Penoyer follows:]

STATEMENT OF

WILSON FISHER

President, Hess & Fisher Engineers, Inc.
Clearfield, Pennsylvania

and

ROBERT PENOYER

CEO, SRP Coal Co., Inc.
Clearfield, Pennsylvania

REPRESENTING

THE
MINING AND RECLAMATION COUNCIL OF AMERICA

AND THE

PENNSYLVANIA COAL MINING ASSOCIATION

BEFORE THE
ENERGY AND MINERALS SUBCOMMITTEE
SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

WASHINGTON, D.C.
February 24, 1983

Mr. Chairman, my name is Bob Penoyer. I operate SRP Coal Co., Inc. of Clearfield, Pennsylvania. SRP Coal Co., Inc. is a surface mining company founded by my father which produces approximately 50,000 tons of bituminous coal annually. I personally have been in the coal business for 35 years starting in the family business in 1948. With me today is Wilson Fisher, President of Hess & Fisher Engineers, Inc., Clearfield, Pennsylvania.

We are testifying today on behalf of the Mining and Reclamation Council of America (MARC) whose membership includes over 250 coal producers and related companies as well as 31 state and regional coal associations. We are also representing the Pennsylvania Coal Mining Association, affilated with MARC. MARC's producing members and affiliates mined approximately 70 percent of the nation's total coal output last year. The Pennsylvania Coal Mining Association has over 160 operator members who mine approximately 60 percent of the entire surface coal production of Pennsylvania on an annual basis. The Association also has 125 associate companies which provide goods and services to the surface mining coal industry. We appreciate the opportunity to appear before the subcommittee to express our support for a fully-implemented abandoned mine lands reclamation program.

We are here to support the efforts of the coal state Governors as Schwinden, Herschler, Rockefeller and others to get the abandoned mine land reclamation program launched. We are equally grateful for what Chairman McClure and Senators Huddleston, Ford, Byrd, and other members did last year in the appropriations process.

We are keenly interested in an aggressive, successful abandoned mine land program because:

- o It will reclaim coal mine lands left orphaned before passage of the Surface Mining Control and Reclamation Act of 1977, alleviating health, safety, and environmental problems.
- o It will put idle workers to productive work at a time of crisis-proportion unemployment and the worst slump in the coal industry in 25 years.
- o The money to do the job lies fallow in a trust fund, already collected. The coal industry continues to pay substantially more into the fund than goes out for reclamation.
- o Spending the money in the fund now contributes to economic recovery without raising new taxes or affecting movement toward a balanced budget after the recovery picks up.
- o The states, who do and should have primary responsibility for the program, have, through their own efforts and the diligence of the Office of Surface Mining, laid the legal and practical groundwork to do the job now.

Since 1977, the coal industry, which is the sole source of funds for the program, has paid nearly $1 billion into the AML trust fund. Less than $330 million has been spent. At the end of FY '84, the trust fund balance, before appropriation, will be more than $1 billion--in a non-interest earning account!

By the time the fund terminates in 1992, the coal industry will pay an additional $2 billion in reclamation fees. The money is there. The issue at hand is to get on with the job.

The Administration budget for FY '84 proposes appropriation of $218.8 million for abandoned mine lands, a healthy increase over prior years which we heartily endorse. But receipts from the 35-cent-per-ton-of-coal tax will be $230.8 million. Clearly, when OSM and the states have done the preliminaries to allow the program to really take off, when the President and the Congress are negotiating a bipartisan jobs bill, when the coal industry has and continues to put the money into a trust fund, to appropriate even less than current receipts makes no sense.

Economic and environmental sense dictates that the AML program be accelerated to draw down the trust fund over the next two fiscal years and put it into an annual balance of receipts and expenditures.

Last year, Congress increased AML funding but bumped up against the budget resolution ceilings.

This year, we strongly urge the committee to insure that there is room in the budget resolution to accommodate an appropriation of $700 million, which would support a state-shared $350 million and still leave more than $300 million in the fund. If states are not able to spend the full amount in FY '84, the appropriation should be carried over until expended. The availability of the funds will stimulate state applications.

Subsequent appropriations, once the trust fund is in annual balance, should be for such amounts collected each year.

Real unemployment in the coal industry is above 30 percent--nearly double the national average. Large amounts of equipment are idle. Coal operators, particularly smaller operators who traditionally sell to what is currently a non-existent spot market for coal, have been idle for many months. Their employees are jobless. These operators, and those that have struggled to survive to-date, have the expertise, knowledge, and equipment to do the reclamation work contemplated by Title IV. Accelerated implementation of the program would provide a much needed stimulus to a depressed industry with substantial ecological benefits.

These monies require no expenditure from general revenues and no additional taxes. To refuse to expend these funds in this time of recession is perverse economics, depriving states and citizens of revenues they need to correct important problems and boost their economies. If the AML fee is not put to its intended use, it becomes just another punitive tax on coal at a time when the U.S. coal industry is struggling to hold onto shrinking markets.

The obligation of AML funds has been slowed by delays in states obtaining primacy under SMCRA, a precondition to Office of Surface Mining approval of a Title IV, Abandoned Mine Land Program, for a particular state. The current OSM administration has worked ardently over the past two years with the states to implement the primacy program Congress set forth in SMCRA. Every major coal producing state has now achieved primacy. As a consequence, the Federal barriers to full implementation of this program have been cleared.

Even though OSM has not issued its final policy statement on the program, there are certain points worth emphasizing in its November, 1982, draft. Most notable is the emphasis placed on the state grant program compared to other spending authorities. MARC firmly believes that is the right way to go. We strongly encourage OSM to reflect that emphasis in its funding requests, which are still below state project estimates. There are two points:

1. Following its own proposed policy, OSM should give a clear presumption to state requests.
2. Basing funding estimates on existing state estimates drastically understates what can be accomplished if states are encouraged to actively pursue reclamation projects through availability of funds and through clearing away administrative hurdles for approval of state requests.

We believe it is consistent with a sound program and OSM's draft policy to use the Secretary's share of the trust fund to supplement the state share. That appears to be the Secretary's intent. The Secretary's share is designed, in part, to fund projects which might escape a state program because of an imbalance between needs and state share funds available in particular states, which is laudable. Two points must be stressed. First, the states should exercise their judgement regarding priorities. OSM should give a clear presumption to these state decisions. Second, the predominant use of the Secretary's share should be additional grants to states.

MARC further believes that the committee should relieve any anxiety at OSM about assuring states they will not lose state share simply because they have been unable, as a result of delayed granting of primacy, to use their allocation of trust funds within three years as required by the law. The statute clearly gives the Secretary discretion to avoid this problem, and Secretary Watt does appear fully sympathetic to using that discretion to keep whole the allocations to individual states regardless of when primacy is attained. To the extent doubt remains on this issue, we would hope the committee could eliminate it through communication with the Secretary.

MARC also believes there is room in the program to support a limited research and development effort, consistent with the intent of the Act. To the extent that states are able, as part of a reclamation project otherwise fundable, to include a small additional amount for R&D, they should be encouraged to do so. OSM should allow such incremental R&D funding as part of the state share and supplement it from the Secretary's share where appropriate. Such small additional amounts of funding can help stretch future reclamation dollars. For example, as part of a project, a state might include a small amount for monitoring an innovative revegetation effort. We emphasize that such research should be part of reclamation efforts and, as such, add to rather than detract from the basic intent of the program--to clean up reclamation needs left over from mines abandoned prior to enactment of SMCRA.

Finally, projects which are particularly cost-effective should be encouraged even if not the very highest priority. For example, abandoned mine lands adjacent to an ongoing mining operation might be cleaned up efficiently by that operator.

In sum, MARC believes the immediate needs for the AML program are:

1. Room in the budget resolution for an appropriation of $700 million, with balances carried over and subsequent permanent appropriation of annual receipts.
2. Rapid approval, consistent with the language of the FY '83 continuing resolution, of state project applications.
3. Consistent with the priorities set in the Act, as much discretion to states as possible in identifying and implementing projects.
4. Use of the Secretary's share to supplement and support state programs.

The job intended by Congress when it set up the AML fund can be done. It's time for the states to assume their intended role, get the resources, and get on with the program.

SPECIFIC PCMA CONCERNS AND RECOMMENDATIONS

In addition to the funding problem, I wish to address a serious problem which PCMA perceives on *how* AML funds are appropriated and spent. Under §403 of SMCRA, Congress sets six (6) priorities for the expenditure of AML funds.

The top three (3) priorities are:

1. Protection of public health and safety from *extreme* danger;

2. Protection of health and safety from adverse effects coal mining; and

3. Restoration of land and water resources and the environment of previously degraded by adverse effects of mining.

In Pennsylvania little, if any, AML funds have gone or will go into land reclamation or restoration of adversely affected water resources. State regulatory authorities, such as Pennsylvania's Department of Environmental Resources (DER) have refused, citing section 403, to seek AML funds for projects other than mine fire and subsidence controls.

These problems are largely, if not exclusively, the result of past underground mining operations. Surface miners who pay $.35 per ton in AML fees (contrasted to underground miners who only pay $.15 per ton) are seeing no returns in their localities on AML expenditures or attempts to remedy past practices from their industries.

Illustrative of this problem in Pennsylvania is how AML funds have been collected and spent or proposed to be spent. In Pennsylvania, as of July, 1982, the following counties have contributed the most in AML funds:

1. Clearfield County - $16.7 million
Indiana County - $8.8 million
Clarion County - $0.0 million
Cambria County - $6.0 million
Greene County - $5.8 million
Washington County - $5.6 million
Somerset County - $5.5 million
Armstrong County - $4.8 million
Jefferson County - $4.8 million
Fayette County - $3.0 million

The total for ten (10) top counties in Pennsylvania is $68. million. It is shocking that Pennsylvania's DER has,in its application for the state share of AML funds,proposed not to spend a single dollar in any of these top ten (10) counties, concentrating instead on subsidence and mine fires. In addition, an examination of the attached county by county list of expenditure of the Secretary's share of AML funds shows an equally shocking disproportionate expenditure in counties which have not contributed nearly as much as the ten surface mining counties above listed. PMCA believes that the priority system of Section 403 need not be changed. While it is not the position of MARC, PCMA believes that underground and surface AML fees should be segregated into two separate funds, each to remedy the past problems of their own respective industries.

In addition, we recommend that OSM and the states evaluate the costs and benefits of each AML project. In so doing, consideration should be given to directing Secretarial-share monies to those projects which would otherwise consume a disproportionate share of state funds. This supplement would ensure mitigation of other AML sites through state funding. We believe this is consonant with OSM's goals to achieve a consistent reduction of damage resulting from past mining activities. PCMA also submits that Congress should direct OSM to consider, pursuant to Section 402(g)(1) geographical allocation of AML funds within a state. Support for the AML program and SMCRA itself has waivered and disappeared in Pennsylvania's counties which see millions of dollars in the form of taxes through collection of AML fees being withdrawn from their local economies and being used elsewhere. It is not understating the problem to say that there is a severe crisis of confidence.

In conclusion, Congress must take a close look at the effectiveness of the AML program to date. We submit that the purpose and intent of the Abandoned Mine Land program was to ameliorate and mitigate the environmental and aesthetic impacts of past surface mining practices. We would hope that the Congress and the Office of Surface Mining will provide needed guidance to the state of Pennsylvania in this regard. We will continue to support the AML program so long as it meets the objective set forth in Section 102(h) of SMCRA, that is to promote reclamation of mined areas left without adequate reclamation.

This concludes our testimony Mr. Chairman, we would be pleased to answer any questions.

Senator **Warner**. Do you have any further comment on any aspects that should be initiated by the Congress?

Mr. **Penoyer**. As yet we have not seen the new program that Representative Rahall introduced yesterday, so therefore I couldn't possibly comment.

Mr. **Fisher**. We generally feel inherently the concept is very sound and appreciate Congressman Rahall's effort in that regard.

Senator **Warner**. That feeling came to me.

Thank you very much. Now we'll have an additional group of witnesses. We have Mrs. Altizer, executive director, Virginia Coal Council; Mr. Dewey, Rocky Mountain Energy from Colorado, and Mr. Slemp, project director of the Powell River Project, Duffield, Va. I think it would be wise to put in the record so those here could have a better understanding of what is the Virginia Coal Council.

STATEMENT OF BARBARA ALTIZER, EXECUTIVE DIRECTOR, VIRGINIA COAL COUNCIL, RICHLANDS, VA.

Ms. **Altizer**. I'm Barbara Altizer, executive director of the Virginia Coal Council. I'd like to thank you for the opportunity to appear before you with recommendations regarding the abandoned mine land reclamation program funds.

The coal council is an organization created by concerned Americans. All the major coal producers of southwest Virginia, as well as John Kennedy, president of UMWA district No. 28 are represented on the directorate of the VCC. Our other directors are county supervisors from coal-producing counties, chambers of commerce, businesses, supplier industries, and professional leaders. Their general view is that the money appropriated was produced by the coal companies and their employees who are now in grievous and extended trouble and that all means should be used to get every dollar possible into southwest Virginia and the other mine-related counties throughout the Appalachian region's economy. We are hoping for $20 million in Virginia.

The coal companies have an enormous pool of unemployed miners with every sort of skill, equipment, engineering staff, and managerial ability. We believe prompt congressional action to accomplish priorities submitted by Mr. Brown of Virginia's division of mined land reclamation will benefit our people. People are losinq their homes and cars, and many businesses are being forced into bankruptcy. Times are trying and difficult and many are truly desperate.

We have approximately 25,000 unemployed in the seven Virginia coal counties and the city of Norton; the unemployment rate is nearly 30 percent. Certainly you can see our coalfields are in dire need of any assistance you can offer. May we recommend that this reclamation program be considered primarily as an economic relief measure for southwest Virginia. After all, the abandoned mine reclamation fund was created to reclaim and restore land and water resources adversely affected by past coal mining. What better group than our unemployed miners and construction workers?

We are asking that the practices, rules and redtape be modified in every way possible in order to qualify for the largest amount of reclamation funds possible. And again, we ask that the coal companies and miners be utilized at as many stages of the planning as possible.

Thank you.

Senator **Warner**. Thank you very much, and thank you for being patient.

[The prepared statement of Ms. Altizer follows:]

Mr. Chairman and members of the sub-committee

I am Barbara Altizer Executive Director of the Virginia Coal Council.

I want to thank you for the opportunity to appear before you with recommendations regarding the abandoned mined land reclamation program funds.

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Thank you.

STATEMENT OF C. B. SLEMP, PROJECT DIRECTOR OF POWELL RIVER PROJECT, PENN-VIRGINIA RESOURCES, MANAGER OF LAND PLANNING, DUFFIELD, VA.

Mr. **Slemp**. Mr. Chairman, I am here today to represent the Powell River project, a project sponsored by Virginia Polytechnic Institute and State University, dedicated to the economic resource potentials of Virginia coalfields.

My background and interest relates to abandoned mine land projects and future activities. I have taught vocational agriculture for 12 years, I am a part-time farmer, and I have worked for 5 years for a company with land and mineral holdings of 90,000 acres, with responsibilities of bringing 10,000 acres of abandoned mined land into a productive land use. The company for which I was formerly employed has invested approximately $750,000 into research and extension activities through Virginia Polytechnic Institute and State University for land-use and reclamation studies in Virginia's seven-county coalfield.

I was director of the Daniel Boone Soil and Water Conservation District from 1979 to 1982 and I served as chairman of the Virginia Association of Soil and Water Conservation District, Committee on Mined Land Reclamation. Through our efforts, the National Association of Soil and Water Conservation Districts has formed a national committee to address abandoned mined-land activities. We have spent several thousand dollars promoting priority III recognition. I have further written to Senator Udall concerning this matter.

I am also the chairman of an advisory committee, representing Virginia's abandoned mined lands-rural abandoned mine program—AML-RAMP—programs.

The abandoned mined land program in Virginia has been very successful and it has addressed the priority I activities in a responsible manner. However, there is a tremendous challenge and opportunity to act on behalf of priority III projects.

There are thousands of acres of outslopes (abandoned mined land) without vegetative cover in the coalfields. This erosion problem amounts to the movement of millions of tons of soil annually. There is an opportunity to conserve soil on these abandoned mined land sites while actively mining adjacent properties. The opportunity to cost share with the industry to reclaim land while mining is the most cost effective activity that the abandoned mined land program could consider. This activity could also put mines back to work, by making some mining operations cost effective. I challenge Congress to address the issue while there is an opportunity to be cost effective in reclamation as well as affect employment in the coalfields. I wish to submit a document and pictures to illustrate the priority III concept. This will be included in the package.

As Director of the Powell River project, I also wish to submit a copy of the activities to be addressed during the year 1983-84.

I further request that consideration be given to funding research activities associated with abandoned mined land reclamation. The Powell River project has already developed significant information related to soil characterization of abandoned mined land, soil hydrology, soil compaction, soil placement, productive land-use opportunities (beef cattle, soil amendments, forage dominance of serecia lespedeza, hydroseeding of pine, turf grasses, and horticultural crops.

The total Powell River project has been developed with cooperation from the Office of Surface Mining, Tennessee Valley Authority, Virginia Division of Forestry, Soil Conservation Services, industry, planning commissions, Virginia Division of Mineral Resources, Citizens for Better Reclamation, community colleges, and many other interested citizens.

The impact that could result from a land grant university having a specific project for the coalfields would be beneficial for all concerned. This project may be the only project of its nature in the United States.

Industry has supported the project with grants equal to $750,000 and the Office of Surface Mining has supported the project with $50,000 for soil placement research. However, the project needs an additional $500,000 this year if it is to address the needs of abandoned mined land activity and needs of the people in the coalfields.

The project has received national, State, and local recognition. I therefore, recommend that funding for research receive favorable consideration.

Hydrology throughout the coalfields is probably the No. 1 one concern among industry, agencies, and citizens.

I suggest that funding be made available to address this concern. The Powell River project is prepared to implement immediately research in the following areas:

Hydrology and geology of selected areas in Virginia's coalfields. (This study could have application throughout the Appalachian topography.)

Water supply alternatives for surface mined areas. The two research activities have been developed as a result of cooperative meetings between agencies, industry, and citizens.

On closing, please consider making abandoned mined land funds available for: incidental reclamation on the outslopes where we have so much acreage; research and land use studies, and hydrologic activities related to the coalfield.

Thank you for the opportunity to make this presentation, and if further information is needed, please feel free to contact me.

[The prepared statement and additional material submitted by Mr. Slemp follows:]

PUBLIC HEARING
AML FUNDS
WASHINGTON, D.C.
FEBRUARY 24, 1983

Sen Warner

MR. CHAIRMAN, I AM HERE TODAY TO REPRESENT THE POWELL RIVER PROJECT, A PROJECT SPONSORED BY VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, DEDICATED TO THE ECONOMIC RESOURCE POTENTIALS OF VIRGINIA COALFIELDS.

MY BACKGROUND AND INTEREST RELATE TO ABANDONED MINED LAND PROJECTS AND FUTURE ACTIVITIES. I HAVE TAUGHT VOCATIONAL AGRICULTURE FOR TWELVE YEARS, I AM A PART-TIME FARMER, I HAVE WORKED FOR FIVE YEARS FOR A COMPANY WITH LAND AND MINERAL (COAL) HOLDINGS OF 90,000 ACRES, WITH RESPONSIBILITIES OF BRINGING 10,000 ACRES OF ABANDONED MINED LAND INTO A PRODUCTIVE LAND USE. THE COMPANY FOR WHICH I WAS FORMERLY EMPLOYED HAS INVESTED APPROXIMATELY 750,000 DOLLARS INTO RESEARCH AND EXTENSION ACTIVITIES THROUGH VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY FOR LAND-USE AND RECLAMATION STUDIES IN VIRGINIA'S SEVEN COUNTY COALFIELD.

I WAS DIRECTOR OF THE DANIAL BOONE SOIL AND WATER CONSERVATION DISTRICT (1979-82) AND I SERVED AS CHAIRMAN OF THE VIRGINIA ASSOCIATION OF SOIL AND WATER CONSERVATION DISTRICT, COMMITTEE ON MINED LAND RECLAMATION. THROUGH OUR EFFORTS, THE NATIONAL ASSOCIATION OF SOIL AND WATER CONSERVATION DISTRICTS HAS FORMED A NATIONAL COMMITTEE TO ADDRESS ABANDONED MINED LAND ACTIVITIES. WE HAVE SPENT SEVERAL THOUSAND DOLLARS PROMOTING PRIORITY III RECOGNITION. I HAVE FURTHER WRITTEN TO SENATOR UDALL CONCERNING THIS MATTER.

I AM ALSO THE CHAIRMAN OF AN ADVISORY COMMITTEE, REPRESENTING VIRGINIA'S ABANDONED MINED LANDS-RURAL ABANDONED MINE PROGRAM (AML-RAMP) PROGRAMS.

THE ABANDONED MINED LAND PROGRAM IN VIRGINIA HAS BEEN VERY SUCCESSFUL AND IT HAS ADDRESSED THE PRIORITY I ACTIVITIES IN A RESPONSIBLE MANNER, HOWEVER, THERE IS A TREMENDOUS CHALLENGE AND OPPORTUNITY TO ACT ON BEHALF OF PRIORITY III PROJECTS.

THERE ARE THOUSANDS OF ACRES OF OUTSLOPES (ABANDONED MINED LAND) WITHOUT VEGETATIVE COVER IN THE COALFIELDS. THIS EROSION PROBLEM AMOUNTS TO THE MOVEMENT OF MILLIONS OF TONS OF SOIL ANNUALLY. THERE IS AN OPPORTUNITY TO CONSERVE SOIL ON THESE ABANDONED MINED LAND SITES WHILE ACTIVELY MINING ADJACENT PROPERTIES. THE OPPORTUNITY TO COST SHARE WITH THE INDUSTRY TO RECLAIM LAND WHILE MINING IS THE MOST COST EFFECTIVE ACTIVITY THAT THE ABANDONED MINED LAND Program (AML) COULD CONSIDER. THIS ACTIVITY COULD ALSO PUT MINERS BACK TO WORK, BY MAKING SOME MINING OPERATIONS COST EFFECTIVE. I CHANLLENGE CONGRESS TO ADDRESS THIS ISSUE WHILE THERE IS AN OPPORTUNITY TO BE COST EFFECTIVE IN RECLAMATION AS WELL AS EFFECT EMPLOYMENT IN THE COALFIELDS. I WISH TO SUBMIT A DOCUMENT AND PICTURES TO ILLUSTRATE THE PRIORITY III CONCEPT.

AS DIRECTOR OF THE POWELL RIVER PROJECT, I ALSO WISH TO SUBMIT A COPY OF THE ACTIVITIES TO BE ADDRESSED DURING THE YEAR 1983-84.

I FURTHER REQUEST THAT CONSIDERATION BE GIVEN TO FUNDING RESEARCH ACTIVITIES ASSOCIATED WITH ABANDONED MINED LAND (AML) RECLAMATION. THE POWELL RIVER PROJECT HAS ALREADY DEVELOPED SIGNIFICANT INFORMATION RELATED TO SOIL CHARACTERIZATION OF ABANDONED MINED LAND, SOIL HYDROLOGY, SOIL COMPACTION, SOIL PLACEMENT, PRODUCTIVE LAND-USE OPPORTUNITIES (BEEF CATTLE, SOIL AMENDMENTS, FORAGE DOMINANCE OF SERECIA LESPEDEZA, HYDROSEEDING OF PINE, TURF GRASSES, AND HORTICULTURAL CROPS.

THE TOTAL POWELL RIVER PROJECT HAS BEEN DEVELOPEMT WITH COOPERATION FROM THE OFFICE OF SURFACE MINING (OSM), TENNESSEE VALLEY AUTHORITY (TVA), VIRGINIA DIVISION OF FORESTRY (VDF), SOIL CONSERVATION SERVICES (SCS), INDUSTRY, PLANNING COMMISSIONS, VIRGINIA DIVISION OF MINERAL RESOURCES (VDMR), CITIZENS FOR BETTER RECLAMATION, COMMUNITY COLLEGES, AND MANY OTHER INTERESTED CITIZENS.

THE IMPACT THAT COULD RESULT FROM A LAND GRANT UNIVERSITY HAVING A SPECIFIC PROJECT FOR THE COALFIELDS WOULD BE BENEFICIAL FOR ALL CONCERNED. THIS PROJECT MAY BE THE ONLY PROJECT OF ITS NATURE IN THE UNITED STATES.

INDUSTRY HAS SUPPORTED THE PROJECT WITH GRANTS EQUAL TO $750,000 AND THE OFFICE OF SURFACE MINING (OSM) HAS SUPPORTED THE PROJECT WITH $50,000 FOR SOIL PLACEMENT RESEARCH. HOWEVER, THE PROJECT NEEDS AN ADDITIONAL $500,000 THIS YEAR IF IT IS TO ADDRESS THE NEEDS OF ABANDONED MINED LAND ACTIVITY AND NEEDS OF THE PEOPLE IN THE COALFIELDS.

THE PROJECT HAS RECEIVED NATIONAL, STATE AND LOCAL RECOGNITION. I THEREFORE, RECOMMEND THAT FUNDING FOR RESEARCH RECEIVE FAVORABLE CONSIDERATION.

HYDROLOGY THROUGHOUT THE COALFIELDS IS PROBABLY THE NUMBER ONE CONCERN AMONG INDUSTRY, AGENCIES, AND CITIZENS.

I SUGGEST THAT FUNDING BE MADE AVAILABLE TO ADDRESS THIS CONCERN. THE POWELL RIVER PROJECT IS PREPARED TO IMPLEMENT IMMEDIATELY RESEARCH IN THE FOLLOWING AREAS:

1. HYDROLOGY AND GEOLOGY OF SELECTED AREAS IN VIRGINIA'S COALFIELDS. (THIS STUDY COULD HAVE APPLICATION THROUGHOUT THE APPALACHIAN TOPOGRAPHY)
2. WATER SUPPLY ALTERNATIVES FOR SURFACE MINED AREAS.

THE TWO RESEARCH ACTIVITIES HAVE BEEN DEVELOPED AS A RESULT OF COOPERATIVE MEETINGS BETWEEN AGENCIES, INDUSTRY AND CITIZENS.

ON CLOSING, PLEASE CONSIDER MAKING ABANDONED MINED LAND (AML) FUNDS AVAILABLE FOR:

1. INCIDENTIAL RECLAMATION
2. RESEARCH AND LAND USE STUDIES, AND
3. HYDROLOGIC ACTIVITIES RELATED TO THE COALFIELD

THANK YOU FOR THE OPPORTUNITY TO MAKE THIS PRESENTATION, AND IF FURTHER INFORMATION IS NEEDED, PLEASE FEEL FREE TO CONTACT ME.

RELATIONSHIPS BETWEEN THE RESEARCH NEEDS OF THE AML PROGRAM AND 1983 POWELL RIVER PROJECT PROPOSALS

The reclamation research carried out by the Powell River Project in SW Virginia has the potential to answer many pertinent questions regarding the reclamation and use of abandoned mine lands in Appalachia. Following is a short summary of the relationships between research needs of the AML program and some of the ongoing and proposed work of the Powell River Project:

ONGOING RESEARCH

1. The Effects of Controlled Overburden Placement on Mine Soil Genesis and Plant Growth.

    This work is critically evaluating the effects of rock type, surface treatments and placement techniques on reclamation success. Another aspect of this research is a critical evaluation of the physical and chemical techniques used to characterize the plant growth potentials of overburdens and mine soils. Overall, this research could greatly aid in the analysis and revegetation of AML sites, particularly where extensive regrading and topsoil substitutes are employed.

2. Improving Long-Term Phosphorus Availability on Topsoil-Deficient Mine Soil.

    Phosphorus (P) is quite often a growth limiting plant nutrient in mine soils, and little is known concerning its relative plant availability over time. This research may answer many questions regarding the maintenance of P on harsh sites, and aid in the revegetation of AML sites.

3. Utilization of Minesoils for Horticultural Crop Production.

   Through intensive management, many mine soils have produced good crops of tomatoes, strawberries, and several other fruits and vegetables. Many AML sites could have the potential for vegetable crop production after treatment and reclamation.

4. Establishment and Maintenance of Quality Turfgrass on Mine Soil.

   Flat land for housing sites is scarce in Appalachia, and the regrading and reclamation of AML sites will provide many potential homesites over the years. This work will provide the knowledge necessary to maintain lawns and athletic fields on these areas after reclamation.

5. Beef Production from Forages Grown on Reclaimed Surface Mined Land.

   Beef production is one of the most promising post mining land uses of surface mined lands. The knowledge and practices gained from this research could greatly increase the value and productivity of abandoned mine lands.

6. Conversions of Sericea Lespedeza Dominated Stands to Other Forages for Livestock Use.

   The forage productivity and usefullness of many AML sites is severely limited by dense stands of Sericea, a low quality forage. Through this research, effective techniques are being developed for converting these stands to higher quality grasses and legumes.

7. Survival and Growth of Containerized Pine Seedlings on Strip Mined Lands as Affected by Cultural Treatments and Edaphic Factors.

   The quick establishment and rapid growth of trees is essential to many AML reclamation strategies. This work is yielding many important results regarding the effects of species, fertilizers and herbicide treatments on pine seedling survival.

8. Hydroseeding Pine-Grass-Legume Mixtures for Erosion Control and Reforestation.

    This technique may be capable of producing vigorous plant communities on a wide variety of mine spoils for a minimal cost.

PROPOSED RESEARCH 1983-1986

1. An Investigation into the Use of Municipal Sewage Sludge as a Mine Soil Amendment.

    Previous research on the Powell River Project has shown sewage sludge to be a superior surface amendment for rocky spoils. Sewage sludge has also been shown to be a superior revegetation aid in highly acid mine soils in Illinois and Pennsylvania. The use of sewage sludge in AML revegetation efforts could greatly increase reclamation success, and long term productivity.

2. A Detailed Study of the Stability, Land Use Potential and Erosivity of Surface Mined Lands Returned to Approximate Original Contour.

    This study will critically evaluate the stability, methods of stability analysis, land use potential and erosivity of a number of spoil fill configurations including "Approximate Original Contour". This information will be invaluable in reclamation planning, revegetation and future use of AML sites.

3. Geology and Hydrology of Selected Areas in the Powell River Valley Coal Fields and Vicinity.

    Little is presently known about the hydrologic effects of reclaiming AML sites. Water quality is of great concern in the Appalachian coal fields, and a thorough knowledge of the relationships between AML sites, water quality and reclamation practices could result from this study.

COLLEGE OF AGRICULTURE AND LIFE SCIENCES
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
Blacksburg, Virginia 24061
DEPARTMENT OF AGRONOMY

February 23, 1983

The Need for Research on the Reclamation of Abandoned Mine Lands

Several years ago we initiated a program of research into the characterization of SW Virginia mine soil properties, and the analysis of rock overburdens for plant growth potential. After 4 years of intensive research it has become quite obvious to us that very little is known about rates of rock weathering, mine soil fertility and productivity, methods of overburden analysis, and the reclamation of harsh sites. While some good research has been performed on these topics, much of it is too narrow in scope to be applied in other regions and many of the studies lack sufficient detail and statistical significance.

The reclamation and revegetation of abandoned mine lands involves not only the reshaping and grading of the spoils into stable configurations, but the establishment of healthy long term vegetation as well. Quite often the spoils on AML sites are acid, rocky and dark colored, making them quite difficult to revegetate. These problems are compounded by the fact that we know very little about long term fertilizer effects, nutrient cycling, mine soil acidity and many other factors critical to long term reclamation success. While it may be relatively easy to maintain healthy vegetation on an acidic mine soil for 1 or 2 years, the maintenance of that stand in a healthy condition after the immediate fertilizer effects are diminished is another matter. Without a better knowledge of all of the chemical, physical and biological processes occurring in mine soils, a great deal of money will be wasted on ineffective reclamation techniques.

While it is irrefutable that AML sites which pose an imminent danger to human life and safety should be stabilized and reclaimed first, we also need to be developing effective revegetation technologies that will assure that all AML sites will remain vegetated and stable over time.

W. Lee Daniels

W. Lee Daniels
Research Associate

WLD/ksh

STATEMENTS FROM PROJECT SUPPORTERS

"Here we are with a remarkable new project that enables us to work with private industry to develop this area's resources." Dr. William E. Lavery, President, Va. Tech.

"The future is forever, even after the coal industry is gone. We need to educate the people as to what this is all about." Senator John C. Buchanan.

"This is probably the most important project in Virginia today." John A. H. Shober, President, Penn Virginia Corporation.

"We are just trying to figure out how we can bring it all together and get some good housing out of it . . . But what is going to happen, even in the next decade, if we don't plan?" Mrs. Grethel Williams, Land Owner, Buchanan County.

FURTHER INFORMATION

For further information, contact the Powell River Project, U.S. 58-421 West, Duffield, Virginia. Telephone: 703-431-2831

ADVISORY COUNCIL

Dr. M. B. Wise, Associate Dean, Agri. VPI & SU
Dr. E. N. Boyd, Agriculture, VPI & SU
Dr. J. C. Buchanan, State Senator
S. M. Carbaugh, Commissioner, Va. Dept. of Agriculture
Sandra Dysart, Exec. Director, Va. Mining & Reclamation Assoc.
Dr. Victor Ficker, President, Mountain Empire Community College
Hank Bauer, Agriculture, TVA
Sandra Williams, Va. Citizens for Better Reclamation
Ralph Cox, Office of Surface Mining
L. Kuchinic, Jr., President, Controlled Resources Oil & Gas
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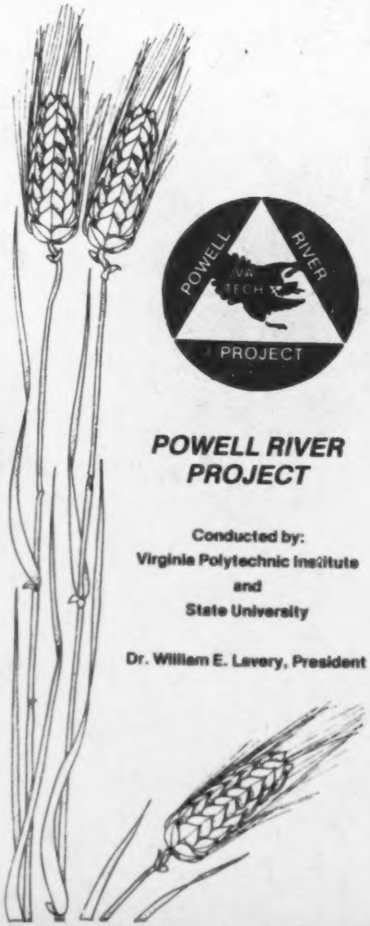
F. W. Walker, Director, VA Conservation & Economic Development
John W. Warner, State Senator
Ray Williams, Vice President, Clinchfield Coal Co.
Danny Brown, Commissioner, Division of Mined Land Reclamation



POWELL RIVER PROJECT

Conducted by:
Virginia Polytechnic Institute
and
State University

Dr. William E. Lavery, President

The Powell River Project is a Land Grant University (VPI & SU) Project dedicated to the economic resource potentials of Virginia Coalfields.

GOAL

The goal is to advance technology in mining and reclamation related activities and to disseminate information on and demonstrate creative opportunities for industry, agencies, and people.

HISTORY

The project got its start in 1979, when Penn Virginia Resources Corporation contacted VPI & SU for assistance with land-use concerns on surface mined land. Since 1979, the corporation has contributed to the project approximately $750,000.

Many companies, agencies, citizens, and educational institutions have been involved from the first day. The present thrust of the project is to develop a research and extension program to meet the needs of Virginia's Coalfields. As the individual needs are addressed, considerable financial resources must be contributed to the project.

Some of the topics already addressed, by the project are: Planning, Beef Cattle, Soil Characterization, Soil Placement, Soil Amendments, Forestry, Horticulture, Turf and Forages.

HONORS

The project has received recognition from the Presidential Task Force on Private Sector Initiatives, local and national media, tour groups, Virginia Chapter Soil Conservation Society of America, National Symposium on Surface Mining, Hydrology, Sedimentology and Reclamation and most importantly, by local supporters.

FUTURE

The future and success of the project will depend upon its ability to continue the present work with priority on hydrology, education, Approximate Original Contour versus land-use, forestry, agronomic research and extension activities. The department of Mining Engineering has made preparations to become very active in the project activities. The continuing efforts of the College of Agriculture and Life Sciences and other University interests are on-going and appreciated.

PROJECT DIRECTOR

C. B. Slemp

PROJECT ADMINISTRATION

J. R. Nichols, Dean
M. R. Geasler, Dean
E. N. Boyd, Associate Dean
M. B. Wise, Associate Dean

PROJECT COORDINATOR

H. J. Gerken, Jr.

Incidental Reclamation

Problem:

According to a recent survey conducted by the VA. Division of Mined Land Reclamation there are approximately 71,860 acres of Abandoned Mine Land (AML) in Virginia. An estimated 20% of this area is composed of barren erosion outslopes rated as a priority three in the ranking process. Many of these sites are adversely affecting the environment and are in need of immediate attention. Funding for priority III projects is not now available under the RAMP Program resulting in an indefinite delay in correcting the severe erosion.

Concern:

Reclamation of these priority three areas i.e. (outslopes, stripped around knobs "(apple cores)", refuse piles etc.) could be carried out while active mining is being performed on the site or adjacent site. Since a finite amount of reclamation funds will be available to government agencies it is imperative that a higher priority in allocating funds be given to projects incorporating "incidental reclamation".

The incidental reclamation concept will reduce overall reclamation costs by utilizing nearby active mining operations to reclaim adjacent AML sites. Since the required construction equipment will usually be in the proximity of the affected site, mobilization expenses will be eliminated. Additionally, the AML sites can be utilized as borrow or disposal sites for the active mining operation, possibly reducing overall costs of the mining operations and possibly eliminating the need to affect new or virgin areas with spoil disposal sites such as head-of-hollow or valley fills.

Using the AML sites as borrow or disposal areas may be advantageous in cases where extra spoil is required to grade the site to an acceptable land form. Thus, the AML site can afford the mining operator the opportunity to mitigate adverse spatial limitations of the mine without expanding the permit area.

This practice is currently prevented by the following regulations and policies:

- Present law prevents the placement of spoil material downslope.
- Funding for priority III projects is not available under the RAMP program.
- Excess spoil must be permitted, bonded, and meet the performance standards under the present law.
- Reclamation cost at a later date will be prohibitive and will increase sediment due to re-disturbance.
- Since only a finite amount of money will be available reclamation of many of these priority three areas may never occur unless this concept is approved.
- Due to the permit requirements it is not economically feasible for coal operators to remove "apple cores" and reclaim bare outslopes unless an incentive is provided.

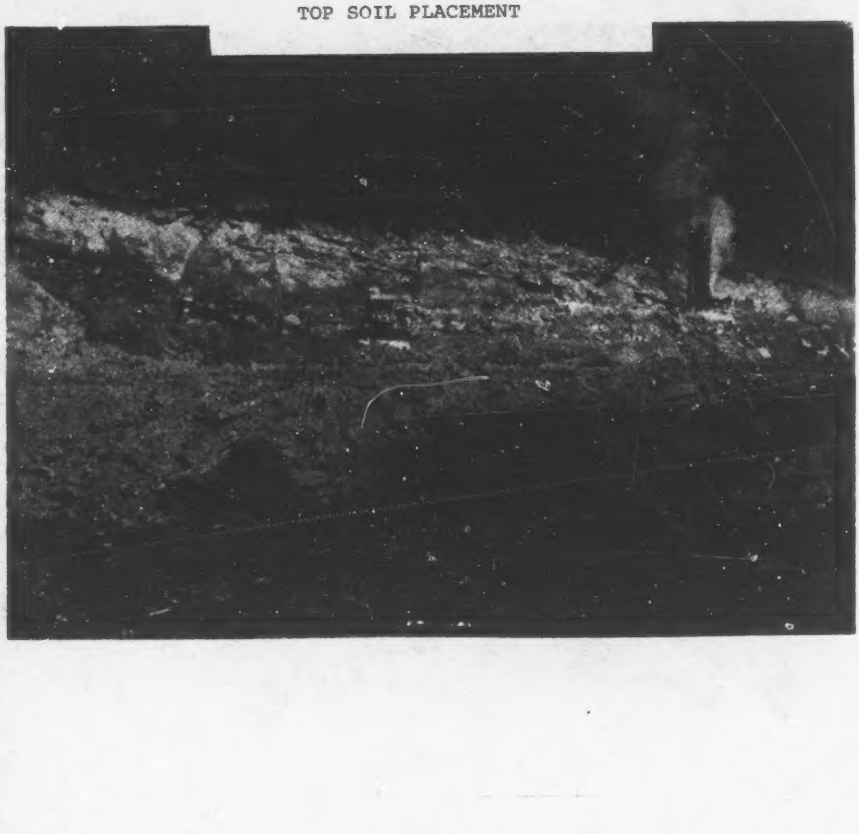
Recommendations:

It is recommended that changes be made to allow for incidental reclamation under an AML contract meeting the AML Guidelines established in the federal regulations. Virginia has just completed one such pilot incidental reclamation project in the St. Charles watershed. This demonstration project was successful and resulted in the reclamation of two abandoned refuse piles at no cost to the AML Fund. This proves that the concept is workable in maximizing reclamation activities.

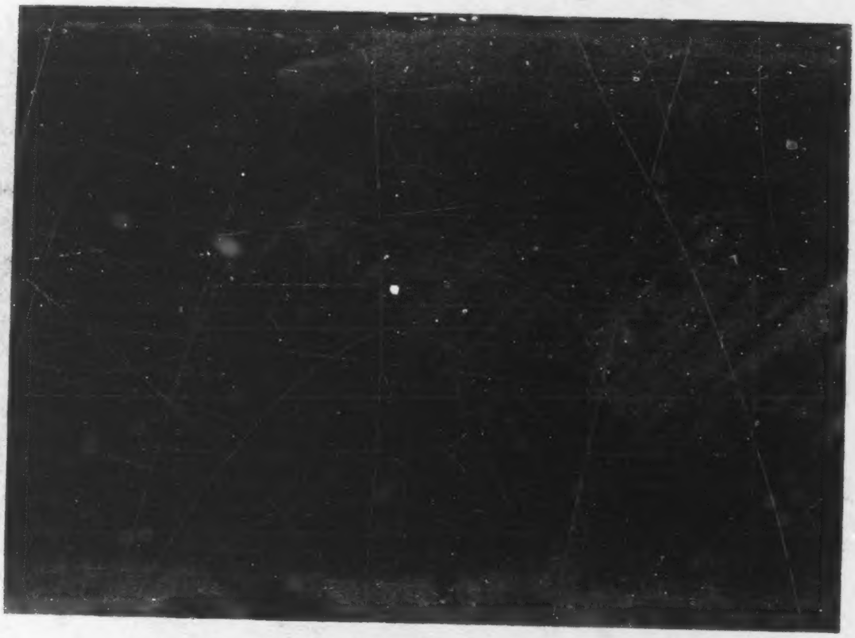
PRIORITY III
AML PROJECT - ST. CHARLES,VA.

PROJECT - GRADING

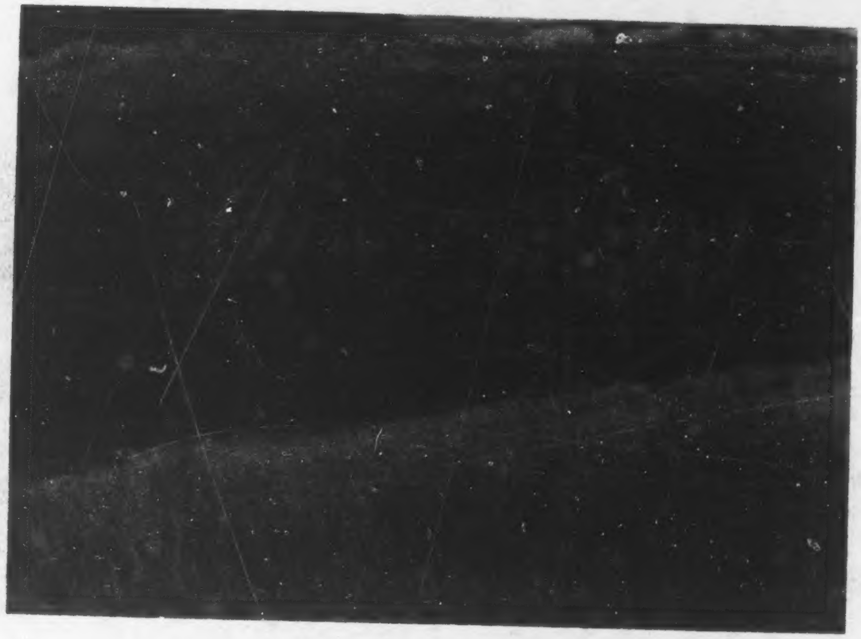
TOP SOIL PLACEMENT



FINAL GRADING



OUTSLOPE EROSION



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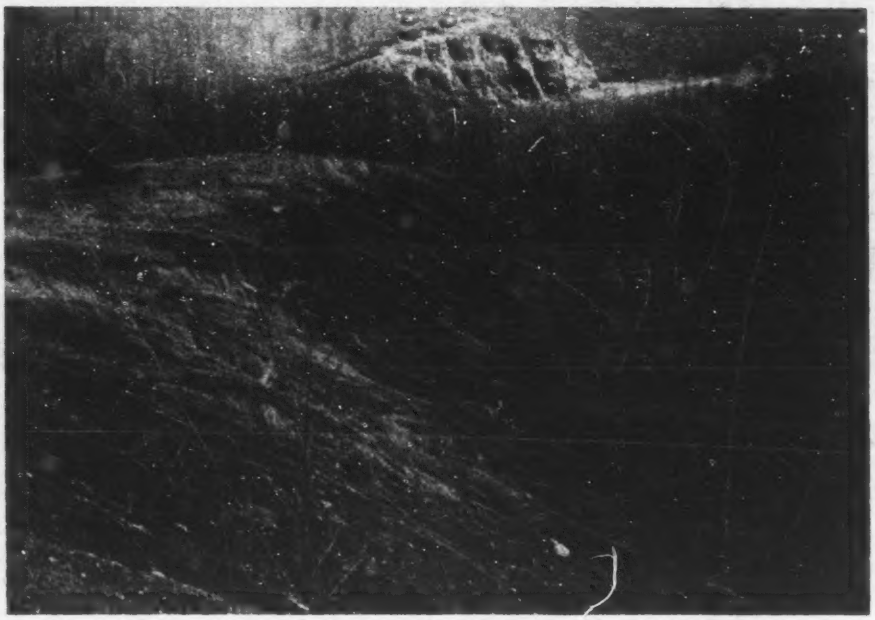
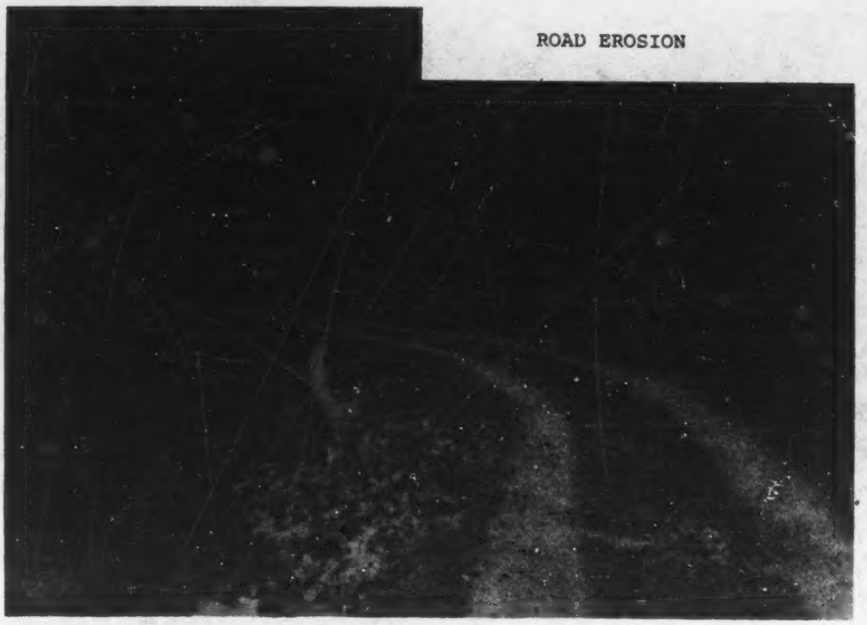


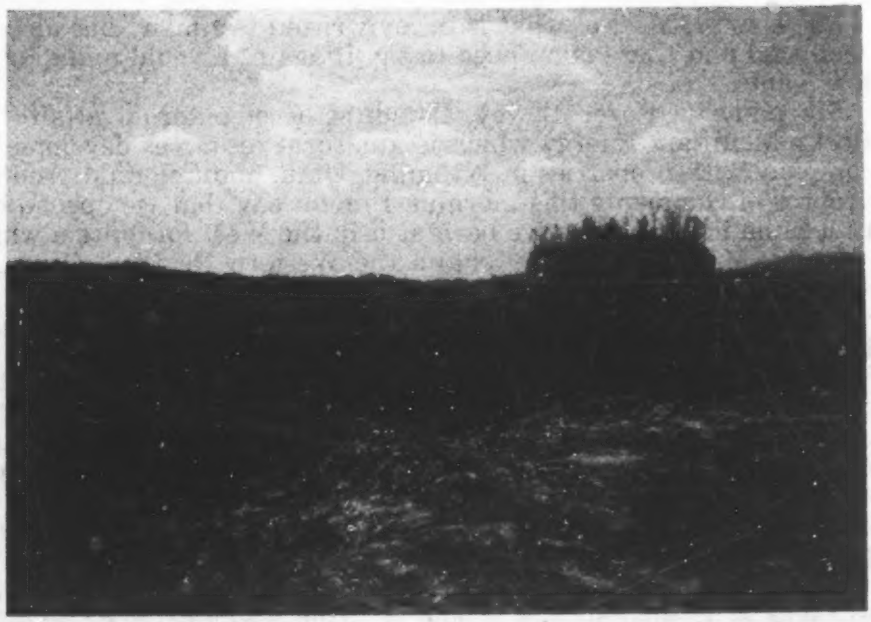
TYPICAL OUTSLOPE OF EROSION

ROAD EROSION



TYPICAL "APPLE CORE"

TYPICAL "APPLE CORE"



Mr. **Sindelar**. In your statement you make the statement that OSM funded to the tune of $50,000 soil replacement for your project. Have you made application to OSM for further moneys? The $500,000 for your project?

Mr. **Slemp**. We have not made application for that but we are in contact with them. Our project proposal was just finished last week through the University. We just got all our proposals approved and a program developed, and I just touched base this morning. We have a meeting scheduled later on in the month to bring this on board.

Mr. **Sindelar**. Do you have any idea what part of the project may be?

Mr. **Slemp**. I would think that some of this may come under discretionary funding if we get some of the moneys for the project.

Mr. **Sindelar**. And you say you need $500,000 this year and yet you have yet to make an application. When you say this year, what is your time table?

Mr. **Slemp**. Our time table for the year usually starts April 15. The project has been on board for three years and we've been operating from April 15.

Senator **Warner**. Mr. Dewey. You've been most patient.

STATEMENT OF ROGER W. DEWEY, DIRECTOR, EXTERNAL AFFAIRS, ROCKY MOUNTAIN ENERGY, BROOMINGTON, COLO., ON BEHALF OF THE WESTERN REGIONAL COUNCIL

Mr. **Dewey**. Most of what is in my written testimony has already been said and there is no need to say it again. I would make just a few points.

My name is Roger Dewey. I'm director of external affairs for Rocky Mountain Energy which is a natural resources development company with properties in Wyoming, Utah, and Colorado. And apropros of comments this morning I might say that we opened our first mine in 1868, so we've been at it in the West for quite a while.

Rocky Mountain Energy chairs the Western Regional Council's coal committee for which I am presenting testimony today. I appear on behalf of the Western Regional Council. The Western Regional Council is an organization of chief executives of 48 companies, active in eight Rocky Mountain States and represents financial, utility, energy, mining, et cetera.

I think the major point that first needs to be made and it's been made before today, is that things are tough in our part of the country as well. Development is certainly slow, and we have a lot of people who have previously been working who are now unemployed. If there is any question in anybody's mind as to whether we have the equipment, management or the skilled and unskilled workers to do the job, that should be dispelled quickly. We're quite capable and we have lots of people available.

I might also add, something was said earlier this morning that this kind of thing doesn't wind up with miners, it winds up with earth movers. I'm not at all familiar with the Eastern coal industry, but in the West the difference between an earth mover and a surface miner is very small. The jobs are the same, the equipment is essentially the same. If an earth mover gets this job the odds are that a miner is going to actually operate the equipment.

Senator **Warner**. I would think so.

Mr. **Dewey**. The trust fund is there, everything is in place. There is a quick and easy way to start putting some people to work. That by no way means we are forgetting the original intent of the bill. We have a high desire to see the environmental impacts mitigated.

I might also point out, perhaps in the West we have a little different view on the coal priority aspect of the law. We have a lot of mines that were abandoned, again before the turn of the century, that were not coal mines. We certainly understand that when those of us are in the coal business and providing funds that coal should be done quickly, but we also have a lot of things in the West that really shouldn't wait until coal is completely cleaned up throughout the entire Nation. That's sort of what we were getting at when we were talking about Montana today.

The Western Regional Council believes an acceleration of the distribution and use of the abandoned mine reclamation fund both for reclamation purposes and for the work opportunities that it will be providing makes sense.

Thank you for the opportunity.

[The prepared statement of Mr. Dewey follows:]

STATEMENT BY
ROGER W. DEWEY ON BEHALF OF
THE WESTERN REGIONAL COUNCIL
BEFORE THE ENERGY AND MINERAL RESOURCES SUBCOMMITTEE, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SENATOR JOHN W. WARNER, CHAIRMAN
February 24, 1983

My name is Roger W. Dewey. I am Director of External Affairs for Rocky Mountain Energy, a natural resources development company with properties in Wyoming, Utah, and Colorado. Rocky Mountain Energy chairs the Western Regional Council's Coal ad hoc Committee for which I am presenting testimony today. Our understanding is that the intent of this hearing is to determine interest in accelerating expenditures from the Abandoned Mine Reclamation Fund for reclamation of abandoned mines, and to determine if sufficient labor and operating equipment capacity exists to do the work.

The Western Regional Council is an organization of the Chief Executive Officers of 48 companies active in the eight Rocky Mountain States. It represents interests of major financial, utility, energy, mining, manufacturing, construction, and other industrial enterprises.

The objective of the Western Regional Council is to recommend to national, state and local governments policies which will enhance the quality of life in the Intermountain region, recognizing the need for a safe and clean environment in which to live as well as the need for a healthy and active economy. That objective fits squarely with the purpose of this hearing.

Until recently, our region experienced aggressive energy and natural resource development to meet current and anticipated future needs. Those activities required an expanded work force, new equipment and facilities, a larger management structure, and enormous capital investments.

The rate of development and growth in our region has now dramatically decelerated in response to domestic and international market changes and to the economic recession. Not only has development of these new ventures slowed, but the existing mineral and energy resource sector of the intermountain economy has been impacted with the survival of some mining, minerals and metals companies in question. Several Western Regional Council member companies have directly experienced this turndown in their industries and nearly all have been affected to some degree.

We now have equipment, managers, and skilled and semi-skilled workers idled throughout the region at an enormous corporate, personal and governmental cost. We have seen a reduction in mining jobs alone of over twenty-five percent in the last year. Uranium industry employment in Wyoming, a state where RME is quite active, is down over 70 percent from 1981 levels. Furthermore, it is anticipated that as economic recovery does take hold, full resumption in the extractive industries will lag behind.

Both the Administration and the Congress are discussing possible jobs programs to ease unemployment rates and personal hardships. There has been disagreement about the scope, historical effectiveness, and budgetary implications of jobs programs. It remains uncertain what may finally be enacted. Even if a program is enacted, there is some doubt if it can be implemented in time to be of real assistance to the unemployed or to economic recovery in general.

The Western Regional Council feels that the Abandoned Mine Lands Reclamation Program, which is already authorized and funded, has the capacity to quickly put people back to work. The Abandoned Mine Lands Reclamation Program is tailor made to assist a portion of the economy and workforce which has been adversely affected in our region.

While the jobs aspect of the program is especially attractive, it by no means detracts from the purpose of the program. You will find little disagreement with the goal of reclaiming abandoned mine sites to eliminate potential health and safety hazards as well as to mitigate their scars on the landscape.

The time is ripe to move ahead with this program. With the current slowdown in mining and related activities, there are people and machinery available to do the work. The program is designed with state and federal roles and the state's portion has the flexibility to utilize this private sector capacity.

Sites have been identified for reclamation throughout our region and all of our states that have paid into the Reclamation Fund have approved programs with the exception of Utah. Nationally, twenty-five states have approved Abandoned Mine Reclamation programs.

We are pleased to note that in the approval notice of Wyoming's Abandoned Mine Land Reclamation Plan in the February 14, 1983 Federal Register, the Office of Surface Mining indicated its intent to move ahead quickly. Quoting from the Federal Register notice:

> "The good cause for making this rule effective February 14, 1983, is: (1) The Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation program plans; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act."

Through November 1982, the Abandoned Mine Fund had collected more than $904 million nationally. Coal producers in the eight Western Regional Council States had contributed a total of $223 million into the Fund, half of which under the Act is directed to go back to the state in which the operation is located. Sizeable amounts have been contributed by WRC member companies themselves.

Of the state's half or entitlement share, $452 million, only $93 million had been distributed to the states. The Congress last year did increase the level of appropriations from the Fund for FY 1983 to $161.2 million, an increase of $63.6 million over the Administration's budget request.

Mr. Chairman, I would like to relate some of the experiences of Western States in efforts to secure AML Funds.

In November 1980, Montana's Abandoned Mine Land Reclamation Program was given final approval by the Office of Surface Mining. Montana's program anticipated reclamation of coal and hard rock AML sites. Montana's first application requested $8.6 million for 18 projects. Thirteen of the projects were coal and five were non-coal.

In July 1982, approval was given for the coal projects for a total of $5.3 million. In October 1982, the hard rock projects were officially "deferred" because they did not constitute a hazard to health. This decision is puzzeling. One of the non-coal sites, the Colorado Mine tailings at Butte, where there are 2400 lunch bucket workers idle, has been identified as the major pollutor of Silver Bow Creek. Silver Bow Creek was recently identified by the Environmental Projection Agency as Super Fund Site #24 in its national inventory of hazardous waste. Additionally, of the remaining four deferred sites, two have been extensively studied by EPA and the Montana Health Department, one was recommended by the Forest Service because of stream pollution, and the final site has a history of flooding with resultant fish kills. We fail to understand why OSM would approve Montana's AML program and yet delay action of all non-coal requests.

In OSM's approval of Wyoming's plan, it appears that flexibility is to be provided in determining site priority for reclamation activities under the State program. Subsidence of old underground coal mines beneath Rock Springs, Wyoming has long been a concern. With an entitlement of $136 million, Wyoming will be able to continue efforts to resolve that problem as well as to reclaim other sites.

With monies continuing to come into the Fund at an annual rate of over $200 million, it would seem to make sense to put this money to work now for intended purposes and at a time when it could be of immediate benefit in providing employment opportunities for out of work miners and equipment operators.

You have heard from Governors urging that the state portion of these funds be allocated and we are sympathetic with their concerns. The funds are available. The people with the skills and the companies with the equipment to restore the environmental integrity of abandoned mines are not being fully utilized. Accelerating availability of entitlement funds to qualified states will also provide an incentive to the states to move ahead with their programs and with the administrative apparatus to manage and utilize the funds as grants are approved.

The Western Regional Council believes an acceleration of the distribution and use of the Abandoned Mine Reclamation Fund, both for reclamation purposes and for the work opportunities that will be provided, makes sense. Thank you for the opportunity for our organization to participate in this hearing and to express our views.

Senator **Warner**. Thank you for participating in this hearing and being patient and being our last witness today. Except for Mr. Harris who has waited patiently to give some wrap-up.

Mr. Harris.

Mr. **Harris**. Thank you, Mr. Chairman.

I'm sure as an elected politician you've been through what I have been through today. Some of the statements made by the witnesses I was elated with, others I bled for, and some of the others I didn't even recognize that this was about the agency that I was associated with.

But I'd like to very briefly run over some of the questions and I think they are in the most part legitimate, that were raised by some of the States.

In the case of the Virginia testimony——

Senator **Warner**. If I might interject again, my period in the Senate is brief. I'm in my fifth year, but very seldom does an administration witness wait until the hearing has come to the end and have the opportunity to come back. Not only do you profit from hearing from the perspective of others, I think it's helpful for the record that we do have your comments.

Mr. **Harris**. I thank you for that opportunity. And I think it balances the record and it does give some answers, and I appreciate the time that you take.

Some of the questions that were raised concerned the method of funding and, of course, we at OSM have no control over that. The act was set up in a manner to collect the funds, to keep them in the Federal Treasury and the manner in which we make the grants is specifically set out in the act. So I have no control over that. That was a fair portion of what was testified to here today.

Concerning the Wise County water project in Weiss County, Va., we did reject that as a Federal project for the reason that Federal projects are pretty well confined to emergency situations. We sent a letter back to the authorities in Virginia and we suggested that they resubmit that project to be handled out of State-side title IV funds. I cannot judge whether or not it would be approved.

In the past, OSM has seen fit to fund the Powell River project to some degree. We look with favor on helping them with their budget in the coming year.

The geohydrological study that Virginia requested funds for had a rather strange twist come to it. They requested these funds to do a wide ranging study on hydrology and geology, to principally be of help to the small land operations, but when the Inspector General in Interior looked at it, it was his opinion that this also would benefit large operators. He said that if we could divide out that portion that would innure to the benefit of the small operator and not to the major operator, then it might be fundable using small operator assistance money. The portion which benefited large operators would be fundable only under the matching grant for the regulator program, and it is our understanding the State is not willing to provide the 50 percent match from State funds.

In the case of the Wyoming testimony and the question about whether or not we asked for enough appropriations to cover their program, their title IV program was approved the 15th of this month. We are well into fiscal year 1983 at this point and they asked for $70 million. Nobody in any State, even West Virginia, as long as this title IV program has been approved, has ever made that sort of a request, and I don't believe that the State of Montana can gear up to handle that kind of funding in a portion of 1 fiscal year.

But, if they can and they have approvable projects, we'll take another look. We have to base our budget requests on facts as we see them, and not on some number somebody may have reached up and pulled down. I think it would be an impossibility to move $70 million worth of projects in the first year of the program. No State has ever approached that.

I hope that you will share with us the information on environmental losses on noncoal projects that were submitted by Montana for the record today because we have never previously seen that report. We have not had that information. We can't legitimately approve these projects until we do get the proper information.

Senator **WARNER**. It's a public record, Mr. Harris.

Mr. **HARRIS**. They mentioned two turn-around times on grants. The ones that took 8 months, we were not a part of that. That was prior to this administration. The last one took 4 months. And our chronology of that indicates that it went back and forth several times because of lack of information.

We have reduced the reporting requirements from quarterly reports to semi-annual reports, one-half of what was required before on the AML project.

We met extensively with the States and identified many of the troublesome reporting procedures. We have attempted to eliminate as many of those as possible. Some of the testimony today indicated that OSM was a sort of a remote Washington bureaucracy that people didn't have access to, when in fact some of these people I've talked to on a biweekly or a monthly basis. We are readily available to them. We're now on the question of time in preparation of grants. One of the time consuming things in grant preparation is the preparation of an environmental impact statement. We are now working on a nationwide EIS that would eliminate the problem of the States having to prepare an EIS on each project.

The last grant submitted by West Virginia had a turn-around time of 47 days, which I think compared with most grant times in most Federal agencies as pretty short.

I was sort of amazed by the testimony given by Ms. Hope Babcock. She thought that we should loosen up the AML regulations and provide for getting the moneys out to the States under less stringent regulations. Ms. Babcock, of course, under the previous administration served as the Deputy Assistant Secretary for Energy and Minerals and had a direct hand in writing the stringent AML regulations which we have reformed in an effort to offer the flexibility that she now thinks should be there.

Additionally, after wanting to loosen up the regulations under title IV, she proposes that we retain the stringent regulations that they promulgated under title V. She questioned the rate at which we are getting funds back to the States. She was a part of the administration that delivered not one nickel through the title IV program, and procrastinated for 3 years on the congressional mandate to propose Indian lands legislation which we will have ready for this session of the Congress.

She commented at length on the Indian lands legislation and its delay, and that was a congressional mandate under the previous administration, and we are the first ones who have taken any action to move that legislation.

We are working extensively with the Indian tribes to put together the package on Indian lands legislation. I personally met within the last month with CERT people and also with the tribal leaders.

She spoke too, hoping that we could clean up the mistakes of the previous administration in this office. We're working diligently toward that. We are trying to clean up a legacy that was left from the previous administration that includes approximately 1,500 failure-to-abate cases. The total amount of civil penalties is approaching $54 million. Our best figures at this time indicate it's going to take us nearly 4 years to clean up that one mistake.

Other testimony states that this administration has added additional paperwork necessary to handle the grant procedures. We have cut down a great deal on the paperwork necessary.

One other statement was made that I would like to address. It was said that we were reducing our commitment to emergency projects. We are not and we have special authority to borrow other funds should we run short on emergency project appropriations.

Personally, I think that no other administration has worked any closer with the States, the mine operators, the Washington environmental groups, and some of the environmental groups in the field to arrive at a balance in regulation such as we have attempted to do.

I think the work that I set out in my opening statement this morning indicates that we have brought this Agency a long way in 2 years to a practical program to protect the environment, to regulate mining and reclamation, and from a practical point of view, to make it more cost-effective. We have conceived a program of credibility, cooperation and compliance which I think is working very well and with which I have every reason to believe, we will ultimately end up with a better environmental end product. We are attempting to handle the AML program in such a manner that the principle priority 1 and 2 projects will be addressed with the funding that will be available under the 15-year extent of the tax set up in the program, and yet address some of those lesser priority needs that we feel have merit out in the various states.

As to Pennsylvania's testimony, their concern principally is that moneys are being paid in large quantities by operators in some counties which do not receive much in return fundinq for AML programs. We have no method and no authority to break this down on a county-by-county basis, so we can't address the problem that they have without legislation.

I think these hearings have been most productive. I appreciate the chairman and the committee taking the time to look closely at the operation of the Office of Surface Mining, particularly the AML programs. I think it is an operation that we at OSM, the administration, and all those parties concerned with mining and reclamation can take a great deal of pride in.

Thank you very much.

Mr. **Sindelar**. As Chairman Warner stated, when you started the hearing, you are to be commended for your efforts in dealing with many problems which you inherited. I think that some of those people that were there before have seen the light and are learning from past experiences maybe, and some of the testimony presented today may be an indication that they've seen the light and decided maybe it wasn't right. We all learn from experience.

I have a couple of questions if I may.

We heard testimony today that the Indian problem, that being qualification of the program, can be handled by regulation versus legislation. The Indian tribes have indicated that they would like to see the legislation. As I understand your summation, you are proposing to submit that Indian legislation to this Congress shortly. That's a step in the right direction.

To that extent also, they raise in their testimony some concern with the 3-year rule, that is if funds collected under this AML fund is not expended within 3 years that they may lose those moneys. And their concern is that through no fault of their own, that's using their words, they have not received qualification and they are concerned that they may lost those moneys.

Now the chairman has some concern over that possibility happening and I know that you share his concern on that, and not to attempt to pin you down, but I saw you have ongoing negotiations with the representative from CERT today. Are we to understand that you may give some assurance that those moneys will not be lost to them while they go through the qualification process?

Mr. **Harris**. Yes, I think I can assure the subcommittee and the tribes that they do not stand at this time to lose moneys due to the fact that their program has been delayed. I think that would be veqy unfair treatment and we'll do everything that we can to keep that from happening.

Mr. **Sindelar**. Another witness testified that the land inventory was a useless exercise or has become useless, and I know the State of Virginia has expressed some concerns to the chairman. We understand that you have given some orders, well not orders, but you have suggested to some States that maybe they ought to rethink their inventory process and do that. To what degree have those orders been given and what is the time table for this reevaluation?

Mr. **Harris**. The inventory is not as accurate as we would like it to be. What we are proposing at this time and will propose to the States very shortly is an open season, so to speak, when they can submit other projects and other problems to add to the ones that are already in the inventory, to give us a truer picture of what the abandoned mine land problem is out there. We feel that the inventory was not a total loss. There was a tremendous amount of money spent on this inventory.

The inventory gives us a good framework and background on which to build when the States come in with additions during this open season and I think it's only fair, since some States handled their submissions differently than others, and their studies differently than others, that they be able to have another period during which they can add to that inventory.

Mr. **Sindelar**. There has been some mention of the Rahall bill today and there has also been some suggested language and some suggested ideas by witnesses that indeed AML money should be placed in interest bearing accounts. If that is a decision by which this committee agrees with, is there legislation needed for that, or as one witness said, can that be done administratively?

Mr. HARRIS. It's my understanding it would be a legislative matter.

Mr. SINDELAR. Turning to your policy which you have submitted for the record, and we will take that and I understand that will be forth coming in a period of time, I have seen a draft of your policy statement and the chairman has reviewed that, and in it you indicate that the RAMP program will be phased out, I believe at the end of fiscal year 1985. And that those moneys will be given, normally be given under the RAMP program, will be given to the States in the form of grants.

The question the chairman has is that under the RAMP program, the Secretary of Agriculture with his corporate knowledge, has some control over those grants and the program itself. There is concern that under the rural abandoned mine program being abolished, that those concerns which the program was set up for may not be addressed. How would you see that there would still be some oversight, even though the program would be abolished, so that the RAMP program policy would be implemented?

Mr. HARRIS. If I may, sir, I'd like to give you a little history on this.

The Congress asked us to do a study of the various delivery systems for the abandoned mined land funds. We did that study and it was decided that we should concentrate our efforts principally with one delivery system. We attempted to pick the one which was most efficient, which would get money on the ground the fastest, and that was the State-AML program.

There were a number of RAMP programs that were well on the planning stage and had moneys expended in that planning process. What we're attempting to do is to continue to fund those planned projects to their completion. Then we hope that the States will take a portion of the funds that come to them through AML moneys and use them on a RAMP-type program working with their State and local soil conservation districts. The States that indicated to us that they feel that this is by far the best delivery system. And it was after much consultation with the States that we arrived at this conclusion.

I never quite understood the RAMP program myself. They call it the rural abandoned mined land program. I don't know of very many urban abandoned mine land programs, so it seemed to be a near duplication of the efforts of the Office of Surface Mining, but yet not inherent in the same priorities. We are working more with high priority projects than the Department of Agriculture was through RAMP.

We feel what has been done here streamlines the program and puts the authority in the hands of the State so they can administer that program. They can then spend the funds available to them, and they choose the priorities and where they choose to work on RAMP-type programs. They are ready to do that.

Mr. **Sindelar**. I would like to state that all witnesses will receive further questions and we would appreciate elaboration as quickly as possible on that.

But the last question I would like to raise would be somewhat in summation. Not only the State of Virginia but most witnesses have been concerned about the priority systems and there has been an attempt to understand, to designate what that is, and if I may summarize your testimony, I understand that you are saying that States may well fund priority 3 projects under their own moneys, but that priority 1's and 2's are of such a magnitude that the moneys being delivered may not cover that and there should be some consideration given before a State ventures away from priority 1's and 2's.

Mr. **Harris**. The act is pretty explicit. It says the projects being undertaken will mirror, and I believe that's the word used, the priorities as set up in the act.

Now there are a lot of interpretations of mirror, I guess, but to me it's an almost exact duplication. We have attempted to grant as much flexibility as we feel we can under the act.

I would like to mention that I also have watching over my shoulder, the Inspector General in the Department of the Interior, who has already cautioned us that we may be straying too far away from priority 1 and 2 projects. So as the Director of this program, I have to be somewhere between where the Inspector General is telling me to be and where the States would like me to be. This is not an easy path to tread. We're attempting to offer as much flexibility as we feel is provided in the act. And with a term like projects should mirror the priorities set up in the act, it doesn't give me a lot of latitude.

Mr. **Sindelar**. We'll have a report that we'll have some questions to you about. With that, the Chairman would like to thank you for testifying and staying on to reply to the suggestions and criticisms, and all witnesses that have been here today, and we appreciate you coming by and spending as much time with us as possible.

Thank you very much.

[Whereupon, at 3:50 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Testimony

of

Governor James R. Thompson
State of Illinois

on

Adandoned Mine Lands Fund

For the

Subcommittee on Energy and Mineral Resources
Committee on Energy and Natural Resources
United States Senate

February 24, 1983

I am delighted to have this opportunity to describe the importance of the abandoned mine reclamation program for Illinois, to emphasize our ability to manage the state AML program, and to offer suggestions to improve federal administration of the program. As a major producer of coal, Illinois has realized substantial benefits from the Abandoned Mine Land Fund and I encourage its continued utilization at the funding levels requested in the President's fiscal 1984 budget.

To address the problems associated with abandoned coal mines in Illinois, four years ago I established the Abandoned Mined Lands (AML) Reclamation Council. The Council, presently chaired by Lieutenant Governor George Ryan, has developed and implemented an abandoned mined lands plan and undertaken several reclamation projects using approved program procedures. The Illinois AML Council has grown from a staff of 3 people in 1979 to nearly 30 persons today. Eight months ago our permanent abandoned mined lands program was approved by the federal Office of Surface Mining, concurrently with Illinois' program to regulate active mines. We received a $5 million grant in 1982 and have requested $14 million for 1983 to reclaim abandoned mines.

The federal Surface Mining Control and Reclamation Act of 1977 established abandoned mine programs to alleviate both environmental and social problems, using reclamation funds which are collected from fees and earmarked for this specific use. Like many states, Illinois has more abandoned mine problems than the projected Reclamation Funds can abate. We have nearly 20,000 acres of severe mine problems including toxic spoil and slurry, acid spoil and contaminated impoundments. During the life of the program, fee contributions from our state are estimated at $210 million. Illinois' 50% share of the funds, $105 million, will only reclaim one third of the problem acres.

Until last year, state abandoned mine reclamation programs have not been able to expend Reclamation Funds which have been collected since 1977. Most major coal producing states, including Illinois, have only recently been authorized to conduct state programs and to receive reclamation grants. With the initial grants, we were able to hire necessary staff, abate immediate hazards, and begin engineering major reclamation projects. This year, with the second grant, we can begin construction of large scale projects. Once this grant is awarded, we will be on schedule with our planned program development.

Illinois' 1983 pending grant for $14 million provides for abatement of safety hazards including open mine shafts, burning refuse and collapsing buildings. It will allow us to reclaim several hundred acres of mine refuse and acid spoil which now contaminate adjacent lands and waterways, creating areas suitable for beneficial uses. Our grant will also create jobs for people in Illinois. We estimate that nearly 500 people will be employed directly and indirectly by our reclamation projects. With statewide unemployment at 12.6% and substantially higher rates in abandoned mine problem regions where heavy construction workers and miners are unemployed, our program will assist in easing this unemployment problem.

We were heartened last year when Congressional appropriations for State AML Programs were significantly increased above fiscal 1982 levels, to $132.5 million. The President's fiscal 1984 budget request of $193.9 million is also quite encouraging and should provide adequate funding for state programs. I urge adoption of this proposed funding level.

In an effort to provide uninterrupted appropriations for this effort to meet ongoing state needs, we would support alternate funding arrangements such as an annual apportionment quarantee based on the revenues raised from the fees with a specified award date. With knowledge of the amount and time of our state award, we could more effectively manage the State AML Program. Our second grant request was made last October to be provided by February 1, 1983. Four months of site inspections, requests for additional information, and meetings to discuss various issues have passed. Many staff hours have been spent and no construction money has been provided. An effective program cannot be planned if funds are not provided in a timely manner.

Illinois has been pleased with the development of reclamation policy by the Office of Surface Mining. We strongly support their position that all discretionary monies of the Secretary of Interior be provided to the states for additional reclamation activities. We believe that states can best identify and manage projects within their state. We will use this additional money to address the remaining two thirds of the problem areas. We are also enthusiastic about managing the emergency work in Illinois and support the recent decision to allow that responsibility to be transferred from the Office of Surface Mining to the states.

In other areas, however, we believe that additional changes are needed. First, the National Inventory of Abandoned Mined Lands should not be used by the Office of Surface Mining to reject projects proposed by State AML Programs. Site selection should be a state decision, which is consistent with Office of Surface Mining approved State AML Plans.

If the National Inventory is used, as proposed, for distribution of the Secretary of Interior's Discretionary Monies, it should be substantially revised. Current inventory data is not based on scientific data, and in Illinois alone, thousands of acres were omitted. The Inventory must not be used until it accurately reflects the national abandoned mine conditions.

Second, all research and development which will be funded with reclamation funds should be managed by the states. Within each state are regional or site specific abandoned mine conditions which need detailed analysis and experimental practices to develop the most efficient methods of reclamation. State AML officials recognize these areas and know the technical capabilities of research institutions which can best address these problems. It is imperative that we have research and demonstration capabilities so that we can develop the most effective methods of reclaiming high priority mine sites.

These comments are intended to identify areas which can be improved upon in order to achieve an exemplary program which will directly benefit many people and improve overall environmental quality. Thank you for your consideration.

COMMONWEALTH OF PENNSYLVANIA
444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001

March 11, 1983

Honorable John Warner
Chairman, Subcommittee on Energy
and Mineral Resources
Committee on Energy and
Natural Resources
United States Senate
306 Dirksen Senate Office Building
Washington, D.C. 20510

Attention: Roger A. Sindelar, Counsel

Dear Senator Warner:

On behalf of Nicholas DeBenedictis, Acting Secretary of the Department of Environmental Resources, Commonwealth of Pennsylvania, I request that the enclosed statement be entered into the February 24, 1983 hearing record of the Office of Surface Mining's Abandoned Mine Reclamation Program.

If I may be of further assistance or provide any additional information, please contact me at (202) 624-7828.

Sincerely,

Gwendolyn S. King
Director, Washington Office

Enclosure

Written Testimony by

Nicholas DeBenedictis, Acting Secretary
Department of Environmental Resources
Commonwealth of Pennsylvania

Submitted to

Energy & Mineral Resources Subcommittee
of the
Committee on Energy and Natural Resources
U.S. Senate

March 1, 1983

The Commonwealth of Pennsylvania, Department of Environmental Resources, appreciates the opportunity to submit testimony regarding the Office of Surface Mining's (OSM) Abandoned Mine Land (AML) Reclamation Program. Pennsylvania has a long history of coal mining and many diversified and complex AML problems as a result of this activity. Since Pennsylvania has approximately one-third of all the abandoned coal mine problems in the nation, we have a deep, vested interest in the success of the program. Pennsylvania can be counted on to continue working towards improving the environment by eliminating mine hazards and reclaiming the scars left by the early coal mining practices in our State. We have worked hard with OSM over the past 5½ years to make the AML Program viable and effective. In many respects, this effort has been successful. We feel, however, that there are several pressing issues upon which Congressional action will have an immediate favorable impact on Pennsylvania's abandoned mine reclamation program.

The most important issue is that a State-Federal cost-sharing arrangement for control of the Centralia Mine Fire be established. As Governor Thornburgh stated in his January 21, 1982, letter to Interior Secretary James G. Watt, the control and abatement of the 20-year-old mine fire in Centralia, Pennsylvania, has historically been principally the responsibility of the U.S. Department of Interior. We strongly urge that Governor Thornburgh's proposal for 75% Federal/25% State funding of this critical problem be accepted by OSM when the exploratory drilling results have been evaluated. We also feel that due to the size of this project and our other program initiatives, the construction at Centralia should be contracted out by OSM. Both Federal and State experts agree that Centralia is the largest and most complex abandoned mine problem in this nation. Therefore, this cooperative cost-sharing and contracting arrangement is absolutely necessary to correct this severe AML problem in a timely manner.

Secondly, we request that Congress support OSM's proposal to have a large portion of the Secretary's Discretionary funds allocated to those states that have extensive high priority AML problems such as Pennsylvania. Pennsylvania's state-share fee collection is approximately $10 million per year. For Pennsylvania to continue to spend AML funds at the current $20 million per year plus level will require a significant commitment of Secretarial Discretionary funds. The Fiscal Year 1983 Appropriation for the AML Program is significantly higher than the Fiscal Year 1982 Appropriation. We commend Congress for this and hope that future year appropriations will continue to increase. It is only proper that these funds which are available for AML reclamation be returned to the states that have a need for the reclamation.

We also feel that, in order to streamline the Program, a continuing and automatic appropriation of the AML Fund by Congress must be instituted. OSM's proposal for a permanent, indefinite appropriation will enable us to plan our program with some assurances of future funding levels. This can only result in a better final product. There has been concern that the states have been unable to spend the funds quickly enough in the past. I think it is obvious that this is no longer the case. Most states now have primacy and are now able to spend their state-share funds. Pennsylvania's 1983 state-share grant application (approximately $22.7 million) is more than double our 1982 state-share grant application ($11.2 million). This shows a commitment on our part to implement a viable program and spend the funds. A permanent indefinite appropriation for the AML Fund will show Congressional support for this effort.

Another major interest in Pennsylvania is that Federal Reclamation funds will continue to be targeted to solving priority problems. In adopting the Surface Mining Control and Reclamation Act of 1977, Congress wisely chose to establish a priority system for abandoned mine land projects, and mandated consistent implementation of that priority system by all involved agencies. We believe that the public credibility of the program depends on continuing our commitment to solve Priority I extreme danger problems across the nation in an efficient and timely fashion. When people's lives and property are at stake, it is vital that we in government keep true to our mandates to solve the important and critical problems first.

Congress recently mandated, in the 1983 Department of Interior and Related Agencies Appropriations Bill, P.L. 97-394, that the RAMP Program be funded through the states rather than directly to the Soil Conservation Service (SCS) in the U.S. Department of Agriculture. We agree with reducing the number of AML Program delivery mechanisms; however, we would like to have the option to utilize SCS staff, where appropriate, to help carry out the RAMP Program. We are disappointed by the interpretation of the current law by USDA which limits SCS's ability to provide project management services upon request by the states. As the state with the largest rural population and most rural abandoned mine problems, the RAMP Program is extremely visible and has been able to address many AML problems that we cannot "reach" with our State Program because of the magnitude of Pennsylvania's AML problem. The SCS had developed an efficient method of problem identification which directly involved a great amount of local participation. Pennsylvania had developed a cooperative working relationship with the SCS and hopes it can continue to benefit from the expertise of that organization. It is only through a continuing cooperative effort that we can deliver the maximum amount of reclamation to our citizens.

Another concern we have is that Congress mandate the Federal Government to pay the prevailing treasury rate on the AML Trust Fund and allocate the interest in the same proportion as the AML Trust Funds. Current interest rates are such that the interest generated would be nearly sufficient to cover the administrative costs of this program. This would allow nearly all of the reclamation fees to be used for actual construction work.

Furthermore, we are very concerned about OSM's "standardization" of the Inventory data. The limited information that we have received regarding OSM's "standardization" process indicates that there is a considerable difference between our original Inventory data and OSM's "standardized" version. The Inventory process should have been fully "standardized" during the two years it took to organize and initiate the Inventory process. It is also apparent that OSM intends to place significant emphasis on the reclamation cost data in the Inventory during reviews of future grant applications. The Inventory was intended to be a data collection process to establish the extent, type and location of abandoned mine problems. It was not intended to be nor should it be represented as, an engineering analysis sufficient to develop specific reclamation project details, such as cost estimates. The cost estimates in the Inventory are very crude estimates that can, and probably will, be changed drastically in many instances when a project is actually developed from the Inventory data base.

We were also disappointed in OSM's refusal to fund our Inventory to completion with Secretarial Discretionary funds when we requested it. The additional funds (approximately $700,000) were required since the number of AML problem areas actually found in Pennsylvania was significantly more than originally anticipated--an increase in problem areas of more than double the initial estimate. Although OSM allowed us to use state-share funds to complete the inventory, the inventory was mandated as a Federal Program need and should have been funded to completion with Secretarial Discretionary funds. In the initial states in the development of the AML Inventory, OSM had required that we adapt their methodologies. The OSM methodologies resulted in an increase in the cost of the inventory for comparison to the more cost-efficient methodologies that Pennsylvania initially proposed. In light of the fact that Pennsylvania has the majority of the AML problems nationwide and that the Inventory in most other states was funded to completion by OSM, we feel that Pennsylvania's Inventory should be funded to completion also.

We thank you for your consideration of our comments. The Department of Environmental Resources is available to discuss any of the recommendations at length if you so desire.

AMERICAN
MINING
CONGRESS
FOUNDED 1897
SUITE 300
1920 N STREET NW
WASHINGTON
DC 20036
202/861•2800
TWX 710•822•0126

Joint NCA/AMC Committee on Surface Mining Regulations

Coal Building 1130 17th St NW Washington DC 20036

NATIONAL
COAL
ASSOCIATION
FOUNDED 1917
COAL BUILDING
WASHINGTON
DC 20036
202/628•4322
TWX 710•822•1167

March 7, 1983

Mr. Roger A. Sindelar
Counsel
Subcommittee on Energy and
Mineral Resources
SD-306 Dirksen Senate Office
Building
Washington, D.C. 20510

Dear Roger:

Please find enclosed a statement of the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations regarding the Abandoned Mine Land Reclamation Fund established by the Surface Mining Control and Reclamation Act of 1977. We request that this statement be included in the legislative record of the hearing held by your subcommittee on February 24 to investigate the administration of the Fund.

Thank you for your assistance in this matter.

Sincerely,

Robt W Long
Robert W. Long
Vice President
American Mining Congress

William E. Hynan
William E. Hynan
Senior Vice President
National Coal Association

Enclosure

AMERICAN
MINING
CONGRESS
FOUNDED 1897
SUITE 300
1920 N STREET NW
WASHINGTON
DC 20036
202/861•2800
TWX 710•822•0126

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NATIONAL
COAL
ASSOCIATION
FOUNDED 1917
COAL BUILDING
WASHINGTON
DC 20036
202/628•4322
TWX 710•822•1167

STATEMENT

OF

THE JOINT NATIONAL COAL ASSOCIATION/
AMERICAN MINING CONGRESS COMMITTEE ON
SURFACE MINING REGULATIONS

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

WASHINGTON, D.C.

March 7, 1983

The Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations welcomes this opportunity to comment on the Abandoned Mine Land Reclamation Fund as part of the Committee's oversight of the fund by the Office of Surface Mining. However, before proceeding with our statement, we would like to discuss the nature and functions of the Joint Committee.

The Joint Committee is an outgrowth of the Surface Mining Control and Reclamation Act of 1977. With the passage of this Act, the American Mining Congress and the National Coal Association decided that the formation of a cooperative committee would better serve the mining industry in its relations with the newly created federal regulatory body.

The Joint Committee is composed of over 100 companies involved in coal mining from an operational, legal and regulatory compliance viewpoint. The committee membership represents the many scientific and engineering disciplines necessary for coal mining under the various state laws and the federal law. Representatives from special disciplines, such as hydrologists, agronomists, biologists and soil scientists, are brought together periodically to focus their talents on OSM regulations.

This pool of experts represents in our judgment the single best source of information on the technical and operational aspects of coal mining and reclamation available in the United States today. Furthermore, we believe that the broad geographic distributions of our members as well as the various sizes of their operations qualifies us to speak competently on all aspects of OSM's regulatory program.

The Abandoned Mine Land Reclamation Fund (AML Fund) has come under increasing attention of late. Originally intended to provide a mechanism for reclaiming and restoring land and water resources adversely affected by past coal mining, the AML Fund has, through the assessment of reclamation fees of 35 cents per ton on surface-mined coal and 15 cents per ton on underground-mined coal, accumulated to almost $1 billion over 5 years. Various parties have moved to expedite the distribution of these accumulated funds in an effort to address past mining practices and to provide some relief from the bleak employment conditions of the coal industry.

The Joint Committee supports these efforts and urges OSM to undertake appropriate and effective administrative actions to expedite the Congressionally-intended disbursement and expenditure of the accumulated AML funds. Several of the states, both on their own and under the auspices of the Interstate Mining Compact Commission, have advocated a more efficient and expeditious disbursement of their respective 50% share of the AML Fund. Although we support the concept of allocating to the individual states their requested portions of the Fund, we also believe it is important for those funds to be utilized as Congress specifically intended in the Surface Mining Act. Thus, at the same time that maximum flexibility should be provided to the states in selecting appropriate projects for AML attention, and in efficiently disbursing those funds, OSM must maintain some degree of oversight over the actual use of the funds so as to assure compliance with the Congressional mandate regarding priorities and uses of the funds.

The industry has a vested interest in seeing that the AML Fund is used effectively and as intended by Congress. We are the sole contributors to the Fund and are presently scheduled to pay into it only until 1992. If those moneys currently in the Fund and yet to be collected are not used effectively, the industry could be unnecessarily and unfairly burdened with the continuation of the reclamation fee. We therefore support efforts to assure that the AML Fund is not squandered on unnecessary, worthless AML projects that do not comply with the provisions of the Act.

The Joint Committee also supports efforts to utilize the AML Fund in such a way as to help alleviate the dire employment conditions of the Nation's coalfields. The industry presently faces one of the worst periods of unemployment in its history and any and all actions on the part of Congress and the Administration to provide relief are most welcomed.

Finally, we believe that whatever adjustments to the use and availability of the AML funds are necessary can be done administratively rather than legislatively. The states are now in the position to implement their respective abandoned mine land reclamation plans and with some adjustment should be able to fine-tune them to correct problems of delay and inefficiency in coordination with OSM. For its part, OSM has a number of mechanisms available to it for amending the AML procedures to provide increased efficiency and flexibility, especially with regard to state AML requests, project review and grant approval. We urge OSM to utilize those available mechanisms for regulatory and administrative change so as to avoid the need for statutory changes.

The AML Fund is a significant aspect of the surface mining program envisioned by the Act and should be given serious consideration and attention. It is only through responsible use of the Fund by both the states and OSM that the adverse effects of past mining practices will be rectified.

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